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IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM 1988

NO: 87-6997

EUGENE JOHN CARELLA,

Appellant/Defendant

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee/Plaintiff

APPEAL FROM ORDER AND JUDGMENT OF
THE SUPERIOR COURT, STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES

APPELLANT'S OPPOSITION TO APPELLEES' OUT-OF-TIME MOTION TO DISMISS APPEAL

EUGENE J. CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

Appellant

In Forma Pauperis

10537

TABLE OF CONTENTS

			Page
I.	PRELIMINARY STATEMENT		1
II.	APPELLANT'S CROSS-STATEMENT		6
III.	APPELLANT'S COUNTER-ARGUMENT		9
IV.	CONCLUSION		14
V.	APPENDIX		
	Motion to Vacate, Set Aside And Reverse Judgment And Alternative Relief, Filed May 26, 1988	A	16-35
	Appellant's Letter Confirming Status on Appeal And Motion to Vacate . . .	B	36-40
	Appellant's Motion And Demand For Reporters' Transcripts At Public Expense Filed January 26, 1988 PRIOR To Oral Argument And Submission of Appeal	C	41-68
	Appellate Department Order Denying Motion And Demand For Reporters Transcripts at Public Expense	D	69
	Appellant's Correspondence to Federal Bureau of Investigation Re: Criminal Abuse of Judicial Process And Enclosures	E	70-104

TABLE OF AUTHORITIES

	Page
CASES:	
Eskridge v. Washington 357 U.S. 214 (1958)	2
Griffin v. Illinois 351 U.S. 12 (1956)	2, 12
Williams v. Oklahoma City 395 U.S. 458 (1969)	2
Francis v. Franklin 471 U.S. 307 (1986)	9,10
Yates v. Aiken 108 S.Ct. 534 (1988)	10
In Re Armstrong 126 C.A. 3d 565 178 C.R. 902 (1981)	11
Aetna Life Insurance Co. v. Lavoie 475 U.S. 813 (1986)	13
STATUTES:	
28 U.S.C. Section 1257(2)	9,14
28 U.S.C. Section 1257(3)	9,14
28 U.S.C. Section 2106	6,8
28 U.S.C. Section 1651	8
RULES OF COURT:	
Rule 46	6,14
Rule 17(b)	5
Rule 17(c)	5

PRELIMINARY STATEMENT

COMES NOW, EUGENE JOHN CARELLA, Appellant herein, and does hereby and herewith and in no uncertain manner, oppose Appellee State of California's **six (6) month belated Motion to Dismiss Certain Portions of the Hereinabove referenced Appeal** -- e.g., No. 87-6997, and respectfully prays an Order issue promptly denying said motion with prejudice and that Appellant be accorded all that relief requested in his Jurisdictional Statement filed May 17, 1988, and his Motion to Vacate, Set Aside, and Reverse Judgment and Additional Relief filed May 26, 1988, as more fully appear in **Appendix "A"** attached herewith.

In support of said Opposition, Appellant specifically incorporates his Jurisdictional Statement in its entirety filed on **May 17, 1988**, and his Motion to Vacate, Set Aside and Reverse Judgment filed **May 26, 1988**, together with such further and additional documents and evidence to be adduced herein and, specifically, the Reporters Transcript(s) of Trial Proceedings demanded by Appellant to be furnished him at public expense.

Appellant further specifically and unequivocally demands that this Court forthwith furnish Appellant at public expense the complete, comprehensive and true Reporters Transcript(s) of all those trial proceedings forming the subject of this Appeal now before the Court, manifesting a litany of unspeakable and gross constitutional injuries

and abuses that shock the conscience of this Court and threaten the very foundations of our constitutional liberties. Said demand for reporters transcripts contemplates that said transcripts be also made a part of the Record on Appeal, as constitutionally required by this Court's mandates in Griffin v. Illinois, 351 U.S. 12 (1956); Eskridge v. Washington, 357 U.S. 214 (1958); Williams v. Oklahoma City, 395 U.S. 458 (1969) -- prior to an adjudication of any element of Appellant's within appeal prosecuted by him informa pauperis as more fully appears from Appellant's Motion and Demand for Reporters Transcripts at Public Expense and Declaration of Appellant filed and denied by the Appellate Department--BEFORE the Los Angeles Superior Court, Appellate Department, entered its judgment and mandate affirming the trial court judgment as more fully appears in Appendix "C" [Appellant's Motion and Demand for Reporters Transcripts at Public Expense filed January 26, 1988] and Appendix "D" [Order of Los Angeles Superior Court Appellate Department, denying said Motion and Demand for Reporters Transcripts filed January 28, 1988].

Notwithstanding the foregoing, Appellees have consciously and willfully misrepresented to this Court that Appellant's Motion and Demand for Reporters Transcripts was filed "well after briefing and oral argument" when, in fact, said motion was filed prior to oral argument. Such misrepresentation constitutes a gross fraud upon Appellant and this Court. [See Page 6, footnote 7, of Appellees' Motion to Dismiss], requiring that Appellees be sanctioned in an appropriate way by this Court.

Hereinafter set out in their entirety are the twenty-three (23) grounds for appeal relied upon by Appellant in his Appeal before the Los Angeles Superior Court, Appellate Department, and as cause to his motion to receive reporters transcripts of trial evidence which was willfully denied by said Appellate Department whose judgment is now before this Court on appeal:

GROUNDS ON APPEAL

1. Appellant's right to a speedy trial guaranteed by state and federal constitutions was grossly abridged by the Court's denial of Appellant's Motion for Mandatory Dismissal pursuant to Section 1382 of the Penal Code, and said denial constitutes reversible error.

2. The trial court's failure to stand recused and disqualified in accordance with Appellant's Disqualification Petition and its failure to permit Petition to be filed or lodged constitutes reversible error.

3. Trial court's extreme and gross bias and hatred against Appellant and in favor the The People--including threats of oppression, incarceration and punitive fines--deprived Appellant his right to receive a fair trial and other constitutional rights.

4. Court's refusal to dismiss the Complaint and declare the statutory presumptions contained in Section 10855 of Vehicle Code and 484 of the Penal Code unconstitutional, constitutes an abuse of discretion and reversible error.

5. Trial court's refusal and failure to instruct the jury in accordance with Appellant's Written Jury Instructions and Charges filed by Appellant on March 18, 198[illegible] and its failure to make any sua sponte instructions regarding Appellant's defense that "legal title and permission to the subject vehicle was entrusted to him pursuant to written contract" constitutes infirming reversible error.

6. Trial court's instruction to the jury over Appellant's continuing objection with respect to the presumptions contained in Vehicle Code Section 10855 and Penal Code Section 484, deprived Appellant of his constitutional rights to a jury trial and fair trial and otherwise constitutes fatal reversible error.

7. Trial court's refusal to admonish and prohibit the prosecution for its misconduct in presenting prejudicial charts and graphs not in evidence to the jury and prosecutor's reference to such documents through the course of the trial and other prosecutorial misconduct constitutes infirming reversible error and denied Appellant's right to a fair trial.

8. Trial court's failure to grant Appellant's Motion to Dismiss on the grounds that the subject criminal proceeding is a prosecution for a "civil debt", for enforcement of a "civil contract", constitutes reversible error.

9. The court's refusal to dismiss the complaint on the grounds that the statutes in question are void for vagueness and ambiguity thereby denying Appellant his due process rights constituting reversible error.

10. Trial court's refusal to grant Appellant's Motion to Dismiss at close of People's case on the basis of insufficient evidence constitutes reversible error.

11. Trial court's refusal to grant Appellant's Motion for Mistrial and for Motion for Judgment Notwithstanding the Verdict constitutes prejudicial, reversible error and gross abuse of discretion.

12. Trial court's refusal to strike People's Jury Instructions or to Accord Appellant Hearing on Jury Instructions constituted prejudicial reversible error and abuse of discretion.

13. Trial court's refusal to grant Appellant a Probation Hearing and accord him a Pre-Sentencing Report after it had set the matter for probation hearing on May 13, 1986 -- together with arbitrary and capricious pre-sentencing conditions and revocation of Appellant's own recognizance status and placing him under excessive bail and physical danger constituted a denial of due process of law and is reversible error.

14. Trial court's denial of Appellant's Motion for Judgment in Arrest of Proceedings for Fraud and Trial Irregularities including jury tampering constituted reversible error.

15. Court's failure to properly arraign Appellant on the subject charges--together with the failure of the Court to properly discharge its duties to Appellant at arraignment of sentencing and judgment denied Appellant his right to a fair trial.

16. Trial court's refusal to permit inquiry and questioning by Appellant into juror pool and the undue voir dire restriction into bias and conflict of interests of jurors constitutes infirming reversible error.

17. The trial court ex parte, in collusion with The People, conspired to fix the jury pool and jurors assigned to the case, and the jury verdict entered on March 24, 1986 was secured by fraud, trickery, deceit and conspiracy between the trial court and The People and various jurors and alternate jurors.

18. The verdict of the jury entered on March 26, 1986 is unsupported by any evidence and was the product of a common enterprise to harm Appellant irreparably and his reputation and livelihood and secured by fraud.

19. The trial court's denial of Appellant's Motion For a New Trial constituted infirming reversible error.

20. The trial court's failure to admit Appellant's evidentiary exhibits and/or Take Mandatory Judicial Notice of Legal Proceedings in which Appellant was participating in California and other forums constituted infirming reversible error.

21. Trial court's refusal to Strike People's Evidentiary Exhibits that were NOT properly authenticated constituted infirming reversible error and should have been suppressed.

22. The trial court's imposition of sentencing Appellant to six (6) months in County Jail with no probation--together with three (3) years of parole--is a cruel, unusual punishment and in excess of the statute and unconstitutional, and must be vacated forthwith, especially in light of the fraud associated with the subject sentencing to prevent Appellant from prosecuting other matters as an attorney and/or plaintiff.

23. For such further grounds as appear from the Transcript of Evidence to be filed herein, including, but not limited to

the face that t... subject arrest and conse ent proceedings were a fraud, nullity and carried out in total absence of any probable cause and trial court's refusal to dismiss proceedings were in concert with third parties to harm and falsely imprison Appellant.

APPELLANT'S CROSS-STATEMENT

Appellees, were duly served by Appellant with Appellant's Notice of Appeal on **April** 11, 1988 and Jurisdictional Statement on **May** 17, 1988, invoking the mandatory appellate jurisdiction of this Court pursuant to 28 U.S.C. Section 1257(2), and were also duly served with Appellant's Motion made pursuant to 28 U.S.C. Section 2106 to Vacate, Set Aside and Reverse the false malicious misdemeanor criminal conviction and judgment obtained pursuant to a racketeering conspiracy (directed and orchestrated against Appellant by the United States intelligence apparatus in combination with third persons to destroy Appellant's credibility, reputation and livelihood) on May 26, 1988, and voluntarily elected not to make or file a response, answer or opposition to said motions [Appellant's Appendix B attached herewith], and thereby **waived** any challenge or objection to the obligatory jurisdiction of this Court. Accordingly, this Court is under an affirmative legal duty (it has no discretion) to adjudicate Appellant's within appeal and motion on the **merits**. Appellant has further made and filed a proper affidavit and motion to proceed **in forma pauperis** and the Appellee(s) have made no opposition [and there is none] to Appellant proceeding in forma pauperis and that he be afforded all the rights, benefits and protections engendered by said legal status consistent with Rule 46 of the Rules and aforeferenced mandates of this Court.

On or about September 1, 1988 approximately six months after the appeal was properly docketed and this Court was noticed by Appellant of its obligatory and mandatory jurisdiction to adjudicate the merits of the instant appeal, "the Court" sua sponte directed Appellee State of California to respond to the Jurisdictional Statement. Appellant construes such **out-of-time dispensation** to be gross, unfair, and a 'slanted' application of the Rules of this Court to unduly favor and confer specialized treatment and consideration upon Appellee State of California and to disadvantage Appellant who has punctually complied with all the Rules of this Court and the United States Code to perfect his appeal. Appellant reads 28 U.S.C. Section 1257(2) as compelling the Court to adjudicate the within Appeal and motion(s) on "the merits", as Appellees had **waived** all proper challenge to this Court's mandatory jurisdiction by failing timely to register said challenge in accordancae with the Rules of Court.

Notwithstanding Appellees' Motion to Dismiss, Appellees concede that the mandatory jurisdiction to adjudicate the constitutional invalidity of the two state statutes attacked at trial and appeal by Appellant as being seriously and irreparably violative of Appellant's Fourteenth Amendment due process guaranteés has been properly invoked by Appellant in his Jurisdictional Statement and Appeal. (See, Appellees' Motion, at pp. 3, 4).

Appellees' concession to this Court's obligatory jurisdiction is a persuasive affirmation of its validity in the instant Appeal.

The Court must now proceed to adjudicate Appellant's motion and appeal **on the merits**, as they are constrained by Congress from abstaining to exercise their 28 U.S.C. Section 1257(2) jurisdiction, which is mandatory, and has an affirmative legal duty to rule on the merits of the appeal and motion properly before it, and has further appellate jurisdiction under 28 U.S.C. Section 2106 and 28 U.S.C. Section 1651 to grant Appellant the relief sought by him in his Jurisdictional Statement and Motion to Vacate, Set Aside, and Reverse Judgment on file with this Court since May 1988 -- a period in excess of six (6) months.

Of further moment to this Court is the admission by Appellee, People of the State of California, that both trial court and appellate department had committed grievious constitutional error at the trial and appellate adjudication of Appellant's cause [see, Appellee's Motion, page 10, footnote 11], wherein Appellee states:

> "We regret conceding error by the Appellate Court; however, in Appellee's brief submitted to the Court it was stated: 'The trial court erroneously instructed the jury with respect to the presumption because it failed to clearly indicate that the jury might have, but was not required, to infer the intent to commit theft by fraud' ...". A reasonable jury could have therefore interpreted the statutory presumptions embodied in the instructions as conclusive or

mandatory, or as a mandatory presumption. Appellee further concedes: "In either way, the jury would have been erroneously instructed since the prosecution would be therefore relieved of the burden of persuasion on an element of an offense." Francis v. Franklin, 471 U.S. at 313, 314 [Appellees' Motion, at page 10, para. 1].

This Court can also draw upon its 28 U.S.C. Section 1257(3) jurisdiction conferred by Congress which empowers this Court in addition to mandatory jurisdiction invoked by Appellant pursuant to Section 28 U.S.C. Section 1257(2), when "the validity of a state statute is drawn into question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set out or claimed under the Constitution, treaties or statutes of, or commission held, or authority exercised under the United States." Rule 17(b)(c) of the Rules of Court provides Appellant with even still more compelling authority for the exercise of jurisdiction to adjudicate the within appeal and constitutional questions presented therein on the merits.

APPELLANT'S COUNTER-ARGUMENT

Appellant has set forth in his Jurisdictional Statement and Motion to Vacate, Set Aside and Reverse Judgment such a plethora and wide-range of constitutional offense and injury and engendered this injury in the constitutional

questions presented for review. Appellee has conceded substantial error by the trial court and appellate department, but would have this Court believe that our Constitutional jurisprudence "is no big deal!" Appellant, very much to the contrary, has set forth twelve (12) profound constitutional questions and seeks to have the state statutes under which Appellant was falsely and maliciously prosecuted and convicted declared constitutionally void and invalid by this court, and to further demonstrate the judgment of misdemeanor conviction is so attended and fraught with constitutional infirmities that it be thrown out and vacated post haste.

This Court's mandate in Francis, supra, was recently reaffirmed last term (January 1988) in Yates v. Aiken, 108 S.Ct. 534 (1988) where a unanimous Court upheld the constitutional guarantee that..."the due process clause of the Fourteenth Amendment prohibits jury instructions that have the effect of relieving the state of its burden of proof beyond a reasonable doubt on every essential element of an offense."

Appellant has enunciated twenty-three (23) separate grounds for appeal in the trial court and appellate department commencing in June 1986. These grounds for appeal reflect an egregious abuse of Appellant's constitutional guarantees and protections and are set forth in their entirety and appear in Appellant's Motion and Demand for Reporters Transcripts at Public Expense filed on January 26, 1988 before the appeal was argued or submitted, and before final

judgment was rendered by the Appellate Department. [See Appendix C.]

Appellant has demanded and urged that he be furnished a reporters transcript(s) of trial proceedings, as they evidence a wanton, heinous violation of his constitutional safeguards and protections and manifest prima facie a denial of fundamental fairness and a fair trial. The trial court had Appellant falsely imprisoned when he sought to secure said Reporters Transcript(s) and the Appellate Department and Court of Appeal and State Supreme Court have all denied Appellant [an informa pauperis defendant] the right to the transcripts of evidence. In the same breath that the reporters transcripts of trial evidence were willfully denied Appellant, the Appellate Department held there was "no evidence" to support Appellant's lack of specific intent or to vindicate his grounds on appeal -- twenty-three (23) in number! In Appellant's timely Petition for Rehearing and Application for Transfer he attacked the Order of the "disqualified" Appellate Deparatment as a "virulent affront" to constitutional liberty in this country, constituting a "debauchery of constitutional jurisprudence and values which cripples our entire system of law." (See Appellees Appendix, at p. 66. Appellant urged that he be furnished with the reporters transcripts consistent with the California appellate holding of In Re Armstrong, 126 C.A. 3d 565, 178 CR 902 (1981) that "a misdemeanor defendant upon his request is constitutionally entitled to a verbatim 'record of sufficient completeness," permitting proper consideration of an

appeal..." 178 C.R. at 908.

This Court commencing with Griffin v. Illinois, supra, has constitutionally enshrined the right of a misdemeanor indigent defendant, such as appellant, to the "basic tools of an adequate defense or appeal, when those tools are available for a price to others." This Court in Griffin found that failure to provide the Appellant with a trial transcript for use on Appellant's appellate review constituted a denial of equal protection and due process of law guaranteed Appellant by the Fourteenth Amendment. This appellant asserts the same injury. (See Appellant's Petition for Rehearing, at Appellees Appendix 47-71A, inclusive.) In the declaration Appellant, in support of his Petition for Rehearing, states:

> "That I advised the Appellate Department as far back as October 1986 that the trial judge who is disqualified, had consciously interfered with and obstructed my rights to secure the Reporters Transcripts by having me again falsely arrested..." Para. 14..."That my right to secure the subject transcripts at public expense is a fundamental constitutional due process right which is essential to ensure me of a fair trial and fair appellate adjudication of my rights on appeal." [Appellees' Appendix 62].

Appellant's frustrated access to the reporters transcripts and other deliberate obstructions to his constitutional rights of equal access prompted a letter to Richard Bretzling, Special Agent-in-Charge, the Federal Bureau of Investigation (see Appendix E), and further advised the Bureau that various federal and state statutes, including the disqualification statutes of the State of California which extend to both the trial judge and Los Angeles Superior Court, appellate department judges, all of whom were recused

by Appellant were being criminally subverted and abridged to deny Appellant equal protection and equal access to the courts and deliberately designed to prevent him a fair trial before an impartial judge. See, Aetna Life Insurance Company v. Lavoie, 475 U.S. 813 (1986) holding that a state judge refusal to disqualify himself constituted a denial of appellant due process rights of a fair trial guaranteed by the Fourteenth Amendment.

Appellant has asserted that the trial transcripts of evidence are necessary to prove and document that he sustained infirming constitutional injury and to indicate the grounds for appeal, but the appellate department refused to furnish Appellant with said transcripts despite his right to have same.

Appellee now seeks to use an emaciated record with the transcripts of trial evidence 'omitted', to support their false and spurious arguments to this Court that various of Appellant's federal questions sought to be reviewed were not timely or properly raised and do not raise a substantial federal question. This Court must not indulge such out and out rank artiface and distortion.

The abuses to Appellant's constitutional rights are so strident that he stated in his Petition for Rehearing ... "the judgment of the Appellate Department is so grossly infected with constitutional infirmities, as is the trial judgment, that I am seeking and fully intend to seek appropriate intervention by the Court of Appeal and/or State Supreme Court to have the subject fraudulent judgment vacated

and thrown out because my constitutional rights to a fair trial and fair hearing have been irreparably and irrevocably violated." [Appellees' Appendix, p. 58.]

Appellant is entitled as a matter of law to the reporters transcript of trial evidence which prima facie rebuts each and every assertion made by Appellee in its motion to dismiss.

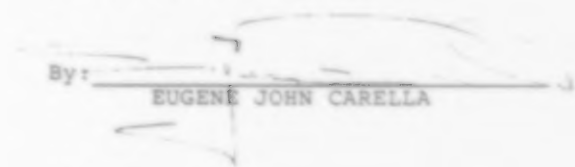
CONCLUSION

FOR ALL THE FOREGOING REASONS, Appellant respectfully prays an Order issue promptly denying with prejudice all that relief sought for by Appellee in their motion to dismiss on Page 12 of said document and, specifically, Paras. 1, 2, 3, and that Appellant be accorded all the relief sought by him in his Jurisdictional Statement and Motion to Vacate, Set Aside and Reverse Judgment filed on May 17, 1988 and May 26, 1988, respectively and that he be furnished at public expense a true and correct reporters transcripts of trial proceedings in accordance with his demand and constitutional right as an informa pauperis appellant, and that he in all ways be afforded with the rights and protections of a litigant authorized to proceed informa pauperis before this Court in accordance with Rule 46 of the United States Supreme Court and that this Court act in accordance with its jurisdiction pursuant to 28 U.S.C. Section 1257(2) and (3) to invalidate the state statutes in question, discharge Appellant from custody, and exonerate in Appellant's favor all legal undertakings or the like and enjoin further malicious prosecution by The People, and such

further and additional relief--including costs, expenses and attorney fees associated with the defense of this willful malicious proceeding and preparation of the instant appeal.

Dated: October 21, 1988

Respectfully submitted:



By: _____
EUGENE JOHN CARELLA

APPELLANT

In Forma Pauperis

FILED
MAY 26, 1988

IN THE

UNITED STATES SUPREME COURT

NO: 87-6997

EUGENE JOHN CARELLA,

Appellant/Defendant

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee/Plaintiff

ON APPEAL FROM ORDER AND JUDGMENT OF
THE SUPERIOR COURT, STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES
APPELLATE DEPARTMENT

MOTION TO VACATE, SET ASIDE, AND REVERSE JUDGMENT AND ALTERNATIVE RELIEF

EUGENE J. CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

APPELLANT

15

COMES NOW EUGENE JOHN CARELLA, appellant herein, in the aforecaptioned appeal, pursuant to 28 U.S.C. Sections 2104, 28 U.S.C. Section 2106, and Rules of Court 10, 11, 12 and the controlling mandates of this Court implementing said statutory provisions, and does respectfully move this Court for an Order reversing and otherwise vacating the judgment and orders now before this Court on appeal, as more fully appear in the Jurisdictional Statement and Appendix duly filed in this cause and specifically incorporated into this motion as EXHIBITS "B" and "C." Alternatively, should this Court require further and more extensive briefing on the gross constitutional invalidity of the state statutes, the subject of this appeal (e.g., Penal Code 484 and Vehicle Code Section 10851 and 10855), and the other constitutional infirmities and aberations engendered and set forth herein, Appellant respectfully prays this Court suspend, bar and prohibit any further action in or by the Los Angeles Municipal Court, Beverly Hills Judicial District and Los Angeles Superior Court, Appellate Department, each court having been divested of all jurisdiction in the above-entitled cause by virtue of the Notice of Appeal filed on April 11, 1988 and the perfecting and docketing of the subject appeal in conformity with the Rules of this Court and law, pending a final adjudication of this Appeal by the Court. The per se constitutional invalidity of the two state statutes by which the criminal misdemeanor prosecution was commenced against Appellant, and by which his false conviction and false imprisonment have been carried out, conjoined with the other constitutional injuries recited in his Appeal as more fully appears in the Jurisdictional Statement attached herein compels that all

state proceedings, including further execution upon the null and void judgment of conviction and void appellate remittitur affirming said judgment be stayed and suspended and/or vacated by this Court pursuant to the plenary powers vested in this Court by virtue of 28 U.S.C. Section 2106 [see, Grosso vs. United States, 390 U.S. 62, 19 L.Ed. 2d 906, 88 S.Ct. 709 (1967); Haynes v. United States, 390 U.S. 85, 19 L.Ed. 2d 923, 88 S.Ct. 722 (1967); and United States v. Covington, 395 U.S. 57, 23 L.Ed. 2d 94, 89 S.Ct. 1559 (1969)] and authorizing the Court to take action that is "just under the circumstances."

Further, there is substantial appellate precedent for this Court to utilize 28 U.S.C. Section 2106 jurisdiction to invoke its inherent powers to throw out and set aside a jury verdict and judgment procured by fraud and so infirmed, gross and contrary "to right or reason", and to enter an appropriate judgment of its own by way of remittitur in the cause directed to the trial court. Caddy v. American Home Products, 557 F.2d 36 (8th Cir. 1977). Further authority commanding this Court to take the action demanded by Appellant of throwing out and setting aside the void judgment and/or staying and suspending all proceedings and effectiveness of Orders in the trial court and/or Appellate Department in the alternative pending adjudication of the Appeal on the merits and after full briefing on a complete record is authorized by Rule 11 of the Rules of this Court (Supreme Court).

The illustrative note contained in Rule 11 states:

> When notice of appeal to United States Supreme Court has been filed within the time prescribed, an appeal has been taken and district court thereafter is without jurisdiction...
>
> [emphasis added]

See, Schempp v. School District, 184 F.Supp. 381, 3 FRD 2d 1034; Associated General Contractors v. Secretary of Commerce of United States, 459 F.Supp. 766, 77 FRD 3d 31 (1977 Cal. C.D).

The force of 28 U.S.C. Section 2104 is operative in the instant appeal and its effects can be assimilated to the present appeal. The pertinent section states in relevant portion that "an appeal to the Supreme Court from a state court judgment shall be taken in the same manner and under the same regulations and shall have the same effect as if the judgment and decree appealed from had been rendered in a court of the United States." [emphasis added.]

These provisions of the United States Code, taken in combination with the authorities cited hereinabove, together with the Supremacy Clause of the United States Constitution, constrain both state courts, e.g., Los Angeles Municipal Court and Los Angeles Superior Court Appellate Department, from acting while this Appeal is still pending in this Court and proscribe and prohibit the State of California from acting in any manner which would derogate from the jurisdiction of this Court.

Accordingly, this Court is compulsed to stay and suspend and/or vacate all further state action and proceedings pending a full adjudication of this Appeal.

WHEREFORE, Appellant, on the basis of the premises advanced herein--together with all those reasons more fully recited in the Jurisdictional Statement and Appendix--and supporting Declaration attached herewith, respectfully prays

that an Order issue forthwith from the entire court granting Appellant's Motion to Set Aside, Vacate, and Reverse the state judgment (the subject of this Appeal); that an Order further issue declaring the constitutional invalidity of the state statutes attacked in this Appeal, e.g., Penal Code Section 484 and Vehicle Code 10851 and 10855 for the reasons set forth in the Jurisdiction Statement attached herewith and further direct that Appellant be discharged from the onus of the void judgment and conviction forthwith and because of the despicable and irreversible constitutional injuries already inflicted upon Appellant, the State of California be prohibited and enjoined from carrying out a subsequent prosecution. Alternatively, should this Court not wish to act prior to full briefing and submission of the Appeal, Appellant demands this Court promptly issue an Order to the Los Angeles Municipal Court (Beverly Hills Judicial District, Division 5) and Los Angeles Superior Court (Appellate Department) commanding and directing that all proceedings be suspended and stayed or forthwith vacated pending a complete and full disposition of the instant appeal by the Court and pending further written order of this Court; and for such additional relief this Court deems necessary and proper in light of the gross constitutional injuries asserted and sustained by Appellant.

DATED: May 23, 1988

Respectfully submitted:

BY: /S/
EUGENE JOHN CARELLA, ESQ.
Appellan

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE JOHN CARELLA, declare and state as follows:

1. That I am the Appellant herein.

2. That on April 11, 1988 I filed a Notice of Appeal to the United States Supreme Court pursuant to 28 U.S.C. Section 1257(2) on the basis of the per se constitutional invalidity of the California state penal statutes as more fully appear in the Jurisdictional Statement and Appendix on file with this Court in the subject appeal and incorporated into this motion as EXHIBITS "B" and "C".

3. That the questions I presented in the Jurisdictional Statement filed with the Court on May 17, 1988 demonstrate a gross and egregious violation of Appellant's constitutional rights guaranteed by the Sixth and Fourteenth Amendments, and Article 1, Section 9 and Section 10, and other gross constitutional infirmities and aberrations requiring this Court redress and take jurisdiction.

4. That the subject Appeal has been duly docketed by the Clerk of this Court and is pending for review before this Court, and I have been so advised by a clerk of this Court of its docketing on May 19, 1988.

5. That in the Notice of Appeal I filed April 11, 1988, I specifically demanded that the Clerk of Court possessed of the trial record forthwith prepare the Clerk's Record and certify it forthwith to this Court in accordance with the Rules of this Court.

EXHIBIT "A"

6. That the Notice of Appeal I filed attacks the state statutes as being unconstitutional and divested the Los Angeles Municipal Court (Beverly Hills Judicial District) and Los Angeles Superior Court (Appellate Department) of all jurisdiction over the subject litigation (see Rule 11 and Schempp v. School District, 184 F.Supp. 381, 3 FRD 2d 1034 when it was filed on April 11, 1988.

7. That I was ordered to appear on April 12, 1988 by the trial judge Judith Stein and advised that my "failure to appear on said date pursuant to the court's order would result in a warrant of arrest being served upon you [appellant]."

8. That I was compelled to appear at the Los Angeles Municipal Court Beverly Hills Judicial District, Division 5, and to comply with the Order of the court, and advised the trial court that a Notice of Appeal was filed with the United States Supreme Court divesting that court of all jurisdiction.

9. That said trial judge (even though possessing no jurisdiction and under threat of arrest) continued the matter on the remittitur of the Los Angeles Superior Court (Appellate Department) until May 27, 1988 at 2:00 P.M. (PST).

10. That Rule 11 of the Rules of this Court and interpretative notes confirm that the trial court and appellate department were preempted of all jurisdiction over the subject litigation on April 11, 1988 and have no jurisdiction to execute upon the judgment or direct further proceedings until this Court completely and fully disposes of the substantial constitutional challenges raised by Appellant in this Appeal.

22

(See, also Associated General Contractors v. Secretary of Commerce, 459 F.Supp. 766, 77 FRD 3d 31 (1977 Cal. C.D.).

11. That I have also apprised this Court that the proceedings and prosecution carried out against me are not only predicated upon unconstitutional state statutes grossly offensive to Appellant's constitutional rights [see Jurisdictional Statement], but constitute a conscious and deliberate criminal and malicious abuse of criminal process and proceedings against me, carried out by the intelligence apparatus of the United States government.

12. That I further show this Court that the state statutes whose validity are attacked in this Appeal and the complained-of constitutional errors and infirmities engendered thereunder stand in flagrant contradiction and affront to this Court's mandates of In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.E. 2d 368 (1970); Sandstrom vs. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed. 2d 39 (1979); Mullaney v. Williams, 421 U.S. 684, 45 S.Ct. 881, 44 L.Ed. 2d 508 (1975); Francis vs. Franklin, 105 S.Ct. 1965, 85 L.Ed. 2d 344 (1985); Patterson vs. New York, 432 U.S. 197, 97 S.Ct. 2319, 5 L.E. 2d 281 (1977).

13. That I also show that my Sixth and Fourteenth Amendment rights have been irreparably injured and abridged by the aforereferenced criminal process invidiously commenced against me to destroy my livelihood, federal practice and reputation.

14. That I specifically invoke this Court's jurisdiction pursuant to 28 U.S.C. Section 2106 which states that:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct entry of such appropriate judgment, decree, or order or require such further proceedings to be had "as may be just under the circumstances."

15. That I specifically commend to the Court's attention the broad jurisdiction conferred upon it by 28 U.S.C. Section 2106 and the complete and plenary jurisdiction conferred by such statute to criminal proceedings on appeal where there has been an egregious miscarriage of justice carried out against appellant, such as in the instant case. (See, Grosso v. United States, 390 U.S. 62, 19 L.Ed. 2d 906, 88 S.Ct. 709; Haynes v. United States, 390 U.S. 85, 19 L.Ed. 2d 923, 88 S.Ct. 722, United States v. Covington, 395 U.S. 5, 23 L.Ed. 2d 94, 90 S.Ct. 1559.)

16. That I further advise the Court that the plenary grant of jurisdiction conferred by 28 U.S.C. Section 2106 has been invoked by this Court to grant relief to an appellant not even requested by him in his appeal, where the relief was necessary in the interest of justice. (See, Forman v. United States, 361 U.S. 416, 4 L.Ed. 2d 412.)

17. That I state that in my reasoned and professionaly considered opinion and judgment, the constitutional questions I have presented in this Appeal will be disposed of and

concluded in a manner favorable to my cause and that this Court after careful and due deliberation will act to strike down and invalidate the state statutes challenged by me as unconstitutional on their face and the subject of this appeal.

18. That I will sustain further irreparable harm and injury if this Court permits the trial court to continue to carry forward with the void and malicious criminal proceedings against me in absence of all jurisdiction to do so, and the injuries to my person, livelihood, reputation, and the like already visited upon me will be further unnecessarily exacerbated and expanded.

19. That I have been subjected to the false misdemeanor criminal proceedings maliciously inspired against me and based upon constitutionally invalid state statutes for a period of three (3) years and I have been already falsely imprisoned for over sixty (60) days, pursuant to this false proceeding whose purpose, object and intent was to seek to discredit, smear and destroy my profession and background and integrity and to interfere with substantial litigations being prosecuted by me, which harm has already occurred.

20. That I complained to the State Bar of Colorado of which I have been a member since 1958, commencing back in 1980, of a concerted criminal interstate conspiracy directed against me and to the U. S. Department of Justice and Federal Bureau of Investigation, dating back to 1977 of a concerted criminal interstate racketeering conspiracy to destroy my federal practice because of my advocacies under various federal statutes and, particularly, the federal provisions of ERISA (Employee Retirement Income Security Act of 1974), and the

representation of various causes and clients before this Court and other federal forums.

21. That I am informed and thereupon state the subject false criminal proceedings and judgment now before this Court on appeal which pertain to a "rental car I received pursuant to a written rental contract" are an extension of, and relate to, the criminal interstate enterprise I commended to the U. S. Department of Justice and Federal Bureau of Investigation.

22. That I further state the statement of my personal livelihood and accomplishments attached herewith are true and correct statement of my professional livelihood and accreditation. (See EXHIBIT "A-1" attached herewith).

23. That I further state the subject proceedings instigated against me are false, vexatious, and calculated and designed to harm, oppress and disparage and discriminate against me and to collaterally disadvantage me and destroy my livelihood and profession and I specifically request that the Court act now to vacate, reverse, and set aside the false misdemeanor and judgment now before it on appeal and to invalidate the state statutes as unconstitutional and direct them to be stricken down.

24. That I specifically demand that this Court direct and order the trial transcripts of proceedings in Case No. M83675 be prepared by the Court Reporter and made a part of the Record on this Appeal and furnished to me at public expense.

25. That I specifically state the Transcripts completely "document" all the grounds for appeal presented (24 of them) presented to the Appellate Department of the Los Angeles Superior Court, and that I need the subject transcripts to vindicate all those issues raised by me on appeal before this Court.

26. That these vexatious proceedings now before this Court in combination with the aforereferenced conspiracy have "financially debilitated" me and I have been adjudged indigent by this Court. Accordingly, I am entitled to the Trial Transcripts as a matter of constitutional right and respectfully demand the transcripts be prepared, filed and furnished to me at public expense in their true and correct form. (See, In Re Armstrong, 126 C.A. 3d 565, 178 CR 902 (1981).

27. That I have been further advised that the trial judge and third parties acting in concert one with another are seeking to destroy, alter, and have spoiled the reporters notes and trial transcripts so as to cover up the criminal actions carried out against me by the intelligence community at the time of trial.

28. That I specifically invoke the Supremacy Clause of the United States Constitution as a bar and preemption of any further jurisdiction of the lower courts while this appeal is pending in this Court.

29. That I further believe and thereupon state the Administration has sought to cover up their criminal misconduct and undertakings and violations of my rights and person by falsely placing this entire proceeding under a "national security

blanket", thus depriving me of my constitutional rights to vindicate these heinous actions undertaken against me. I am the victim of a continuing federal crime and I demand this Court's intervention in having the crimes enjoined against me as it violates my federal constitutional and civil rights and my human rights in this country.

30. That I further state the United States Supreme Court [this Court] has obligatory jurisdiction to adjudicate the constitutional invalidity of the state statutes raised by me as Appellant in the aforereferenced appeal and the Court is required as a matter of law to decide the questions presented in this Appeal. (See, U.S. Ex Rel Wojtycha v. Hopkins, 517 F.2d 40 (1975).

I declare the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25 day of May 1988 in Los Angeles, California, under penalty of perjury.

BY: /s/
EUGENE J. CASELLA, ESQ.

PROFESSIONAL AND EDUCATIONAL VITAE

ROGER JOHN CASELLA

I. EDUCATIONAL ACHIEVEMENTS:

Elementary Education: High School

Darien High School, Darien, Connecticut.
Graduated 1961; Top 20%; Accepted for Study at Colgate University, University of Connecticut and Denison University; President of Student Council; National Leadership Conference; and Varsity Athletics.

College Education: Bachelor of Arts (B.A.)

Denison University, Granville, Ohio (1961 thru 1965)

Awarded Bachelor of Arts Degree (Political Science) - June 1965

Member: Phi Gamma Delta Social Fraternity.

Advanced Education: Doctor of Jurisprudence (J.D.)

University of Toledo School of Law (1965 thru 1968)
Awarded Juris Doctorate Degree (June 1968)

Licensed and Admitted to Practice Law:

State Supreme Court of Colorado (October 1968)
U. S. District Court of Colorado (October 1968)

II. VOCATIONAL EXPERIENCE: (Corporate and Business)

Mutual Life Insurance Company of New York (MONY)
Advanced Underwriting and Estate Planning Consultant (1968-1969): Primary technical, marketing, and consulting accountability for professional, business, and executive estate and insurance programs; Retirement and pension planning analysis; Advanced underwriting seminars (conducted at various locations throughout the country); Training responsibilities for MONY field underwriters (United States)

1740 Broadway, New York City, New York.

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EXHIBIT "A-1" -13-

II. Continued --

U. S. Trust Company of New York
Financial Planning Consultant and Account Executive for Senior Executives of FORTUNE 500 Corporation (1969-1970): Primary consultant accountability for senior corporate executive clientele; direct corporate interface with senior executive echelon and development of comprehensive financial blueprints, including corporate-sponsored benefit programs and capital accumulation and estate conservation strategies for corporate executives.

45 Wall Street, New York City, New York.

Groesbeck Financial Advisors, Inc.
Senior Vice President of Corporation Division (1970-1973); Comprehensive, technical, marketing and consulting responsibilities for the financial planning requirements of senior corporate executives of FORTUNE 500 corporations. Managerial, supervisory and training responsibilities of technical and consulting support staff personnel (twenty (20) persons); accountability for the marketing, technical design and profitability of corporate financial services addressed to high-income corporate executives of FORTUNE 500 companies; monitoring of capital asset accumulation and estate strategies mandated by tax and investment changes.

1900 Avenue of the Stars, Century City
California 90067.

Edward W. Hay Associates (1973-1974)
Director of Marketing, Executive Financial Counselling Services: Exclusive and primary marketing; nationwide accountability for Edward W. Hay Associates executive financial counselling services designed to serve CEO's, presidents and other senior executives of FORTUNE 500 companies throughout the United States: Responsibilities for new market penetrations and business development.

Rittenhouse Square, Philadelphia, Pennsylvania.

II. Continued --

U. S. Trust Company of New York
Financial Planning Consultant and Account Executive for Senior Executives of FORTUNE 500 Corporation (1969-1970): Primary consultant accountability for senior corporate executive clientele; direct corporate interface with senior executive echelon and development of comprehensive financial blueprints, including corporate-sponsored benefit programs and capital accumulation and estate conservation strategies for corporate executives.

45 Wall Street, New York City, New York.

Groesbeck Financial Advisors, Inc.
Senior Vice President of Corporation Division (1970-1973); Comprehensive, technical, marketing and consulting responsibilities for the financial planning requirements of senior corporate executives of FORTUNE 500 corporations. Managerial, supervisory and training responsibilities of technical and consulting support staff personnel (twenty (20) persons); accountability for the marketing, technical design and profitability of corporate financial services addressed to high-income corporate executives of FORTUNE 500 companies; monitoring of capital asset accumulation and estate strategies mandated by tax and investment changes.

1900 Avenue of the Stars, Century City
California 90067.

Edward N. Hay Associates (1973-1974)
Director of Marketing, Executive Financial Counselling Services: Exclusive and primary marketing; nationwide accountability for Edward N. Hay Associates executive financial counselling services designed to serve CEO's, presidents and other senior executives of FORTUNE 500 companies throughout the United States: Responsibilities for new market penetrations and business development.

Rittenhouse Square, Philadelphia, Pennsylvania.

II. - Continued --

Inverness Planning Corporation (1974 thru 1976)
Vice President, Financial Planning Services - Corporate and Professional Executive Clientele): Direct consulting and marketing responsibilities for executive financial counselling programs and services to high-income corporate and professional executives; structuring and development of executive financial plans, including corporate-sponsored benefit programs (cash and non-cash); management incentive plans, investment plans (conventional portfolio and tax-advantaged plans); tax and estate conservation planning; liquidity analysis for high-income corporate and professional executives nationwide.

345 Park Avenue, New York City, New York

and

1880 Century Park East, Century City,

California 90067.

III. VOCATIONAL EXPERIENCE: (Legal and Professional)

Diversified, Independent Federal Legal Practice (1976-1988)

Federal Trial and Appellate Practice: Primary lead counsel and litigation responsibilities (trial, as well as appellate) for complex federal litigations under the Employee Retirement Income Security Act of 1974 (ERISA statute) and other labor and regulatory statutes); nationwide practice before various federal courts and federal administrative agencies; federal pension, labor, commercial, bad faith, malpractice and personal injury litigation expertise; sophisticated and extensive nationwide appellate skills and practice before various federal circuit courts in the United States and the U. S. Supreme Court; diversified and extensive trial preparation skills and considerable trial acumen in federal forums; preparation of appellate briefs, petitions and documents for various appellate courts and the U. S. Supreme Court.

IV. PERSONAL CHARACTERISTICS:

Distinguished professional acumen and expertise; strong and decisive professional and technical commitments; high personal integrity; intellectually decisive and accountable; positive client skills within executive

IV. PERSONAL CHARACTERISTIC (continued)

and professional societies; high intelligence quotient; self-motivated; confident and accepted at all professional and corporate echelons; outstanding written and verbal skills; high positive visibility within senior corporate and professional communities.

V. COMPENSATION BACKGROUND:

Prior to inception of independent legal practice in 1976, my compensation level was in the five figures plus incentive compensation and corporate perquisites (expense accounts, etc.) Current compensation is negotiable based upon the position, accountabilities and consideration of my extensive professional and business accomplishments, expertise and substantial legal and corporate experience and accomplishments.

VI. PROFESSIONAL ASSOCIATIONS, HONORS & MEMBERSHIPS:

A. Bar Memberships: (State and Federal)

State Supreme Court of Colorado
United States District Court of Colorado
United States Court of Appeals for the District of Columbia
United States Court of Appeals for the Fifth Circuit
Supreme Court of the United States
American Bar Association (past member for 12 years)
Association of Trial Lawyers of America
Practice in other federal trial and appellate forums in the United States.

B. Accreditations:

American Compensation Association (Honorary Member)
Presented Award of Distinction

Who's Who In American Law (Distinguished member)
(1987-1988, 5th Edition)

Who's Who In California (Distinguished member)
(1987-1988, 17th Edition)

VI. Continued --

B. Accreditations - continued

Who's Who In California (1988)
(Distinguished member)

International Platform Association (1988)
(Participating Member)

Who's Who In Emerging Leaders (1988)
(Selected Member)

Selected Delegate to the Dwight Eisenhower
Ambassador to Ambassador Program (1988)

Who's Who in the World, 9th Ed. (1988)
(Selected Member)

VII. REFERENCES UPON REQUEST:

Business, personal and professional references will be furnished upon request.

BY: _____
EUGENE JOHN CARELLA

P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

CERTIFICATE OF SERVICE

I, Eugene J. Carella, the undersigned, hereby certify and swear that on this____day of May 1988 I served a true and correct copy of the within MOTION TO VACATE, SET ASIDE, AND REVERSE JUDGMENT AND ALTERNATIVE RELIEF on all parties of record, interested persons, and Clerk of the Los Angeles Municipal Court, Beverly Hills Judicial District, and Clerk of the Los Angeles Superior Court Appellate Department, by first class mail, postage-prepaid, addressed as follows:

Ira Reiner
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90012

John Van de Kamp
Attorney General
State of California
6000 State Building
350 McAllister Street
San Francisco, CA 94102

Judith Stein, Judge
Los Angeles Municipal Court
Beverly Hills Judicial District
9355 Burton Way
Beverly Hills, CA 90210

Fred Woods, Jack Newman,
Alfred Margolis, Robert
Robertson, Judges
Los Angeles Superior Court
Appellate Department
111 N. Hill St., Rm. 607
Los Angeles, CA 90017

Paul Woods
Air Bail Bonds
121 E. Regent St.
Inglewood, CA 90301

/S/
Eugene J. Carella

35

1

Eugene J. Carella
ATTORNEY AT LAW

August 22, 1988

Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

Re: Carella v. California, No. 87-6997 [Appeal and Motion to Vacate, Set Aside and Reverse Judgment]

Dear Mr. Spaniol:

This letter is to acknowledge receipt of your August 4, 1988 letter responding to my July 18, 1988 letter to your office. Copies of the aforereferenced are enclosed for your convenience.

To avoid any confusion or uncertainty regarding the treatment of my Appeal No. 87-6997 and my Motion to Vacate, Set Aside and Reverse Judgment and Alternative Relief filed May 26, 1988, I am summarizing the following representations made by you and your office:

(1) That the matter of Eugene J. Carella vs. People of the State of California was lawfully brought before the Supreme Court for review pursuant to a Notice of Appeal timely filed on April 11, 1988.

(2) That on May 17, 1988, the Jurisdictional Statement was filed in the above-entitled cause docketed as an appeal on May 17, 1988.

(3) That on May 26, 1988, a Motion to Vacate, Set Aside and Reverse Judgment made pursuant to 28 U.S.C. § 2106 was received and filed with the Court.

(4) That no motions, oppositions or responses of any kind have been made, lodged or filed by any of the appellees to the Appeal, the motions on file, or the Jurisdictional Statement on file with the Court and the time for making any such response or opposition has long since expired.

36

(5) That you have specifically and expressly represented that Public Law 100-352 (S-952) on the mandatory juridiction of the Court does not apply to my appeal, inasmuch as the "new law excepts appeals currently pending in the Court from its coverage."

(6) That the Notice of Appeal filed by me on April 11, 1988, specifically recites that "said appeal is statutorily authorized and mandated by 28 U.S.C. § 1257(2) and otherwise timely brought" and it is unequivocal that the mandatory jurisdiction provisions governing and applicable federal statutes compel that the Supreme Court adjudicate the challenge of the constitutional invalidity I have made to the two (2) state statutes under which I have been falsely arrested, imprisoned and maliciously prosecuted. That is to say, Congress in 28 U.S.C. § 1257(2) gives the Court no discretion to refuse to act upon and answer any constitutional challenge to the California statutes whose invalidity has been aggressively attacked by me and when the state courts have held for validity.

(7) That you have represented to me that my appeal, my jurisdictional statement, my motion to proceed in forma pauperis, and my motion to vacate, set aside, and reverse judgment and alternative relief have all been forwarded to each of the justices of the United States Supreme Court in June 1988 notwithstanding my express demand that the motion to vacate, set aside and reverse be transmitted to the Court last term.

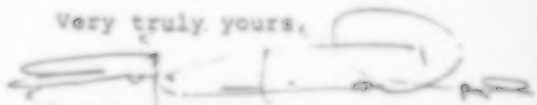
(8) That your office has received correspondence from me regarding acknowledgment upon receipt of the record from the lower state court, which record I dutifully requested be forthwith transmitted to your office in accordance with the Rules of Court. As of today's date, I have no confirming advices from your office or the lower court that the Record has, in fact, been forwarded and transmitted to the Supreme Court. Accordingly, I will be making a Motion to Compel Transmission of the Record and for sanctions.

Again, I reiterate, that I am the victim of a continuing federal crime, interstate in scope, whose purpose is to deprive and deny me my federal constitutional and civil rights and to destroy my life, liberty, freedoms and property orchestrated by the United States intelligence agencies in combination with other third persons, and

I am demanding intervention of the Supreme Court to thwart any further violations of ry person and rights.

I remain,

Very truly yours,



EUGENE JOHN CARELLA, ESQ.

P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

Appellant

[A Colorado resident]

/p

ENCLOSURES

cc: Files (5); RCO

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

JOSEPH F. SPANIOL, JR.
CLERK OF THE COURT

September 2, 1988

Eugene John Carella, Esq.
P. O. Box 67292
Century City
Los Angeles, California 90067-0292

RE: Carella v. California, No. 87-6997

Dear Mr. Carella:

In reply to your further inquiry of August 22, the Court has requested that the appellee in the above case, the State of California, file a response. That response is due on September 30, 1988. As a result, consideration of the case by the Court in conference will be delayed pending receipt of the response.

With regard to the lower court record, it is to be held by the clerk of the lower court pending an order or request from this Court that it be transmitted. If the Court wants the record pending action on your jurisdictional statement, we will send for it.

At this stage the Court will be reviewing your jurisdictional statement to determine whether the Court finds that it does in fact have jurisdiction. If the Court so determines, it will note probable jurisdictional or postpone that issue until the argument of your case on the merits. Thereupon you will have an opportunity to file a brief on the merits in accordance with Rule 34. Otherwise, the Court may dismiss your appeal.

When you are served with a copy of the response by the State of California, you may file a reply brief, although it is not required. In any event, the case will be listed for review by the Court in Conference within two to four weeks after the response is received. Any reply brief should therefore reach us as soon as possible after receipt of the State's response.

Sincerely yours,

Joseph F. Spaniol, Jr.
Clerk

39

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

JOSEPH F. SPANIOL, JR.
CLERK OF THE COURT

August 31, 1988

Harry B. Sondheim, Esq.
Arnold T. Guminski
District Attorney's Office
Los Angeles County
849 S. Broadway
Los Angeles, California 90014

RE: Eugene John Carella v. California, No. 87-6997

Gentlemen:

On May 17, 1988, a jurisdictional statement in the above case was filed in this Court to review an order of the Appellate Department of the Superior Court of California, County of Los Angeles (No. CRA 24001), dated February 3, 1988.

The Court has directed this office to request that a response be filed in this case. The response in appeals normally takes the form of a motion to dismiss or affirm as provided for under Rule 16 of the rules of this Court.

Ten typewritten or otherwise reproduced copies of your response, together with proof of service thereof, should reach this office on or before September 30, 1988.

Kindly acknowledge receipt of this letter on the enclosed copy.

Very truly yours,

Joseph F. Spaniol, Jr.
Clerk

cc: Eugene John Carella, Esq.
The Hon. John Van de Kamp
Attorney General

40

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067-0292

Appellant

ORIGINAL FILED
JAN 2 6 1988
COUNTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE JOHN CARELLA, Appellant, vs. PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	Appeal No. CRA 24001 LAMC M 83675 APPELLANT'S MOTION AND DEMAND FOR REPORTERS TRANSCRIPTS AT PUBLIC EXPENSE; DECLARATION OF EUGENE J. CARELLA; MEMORANDUM OF POINTS AND AUTHORITIES For Immediate Action

TO: JUDGES OF APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, CENTRAL DISTRICT

COMES NOW, EUGENE JOHN CARELLA, ESQ., Appellant herein, without waiver of disqualification to the Judges of the Appellate Department of the Superior Court of California, County of Los Angeles, Central District, and pursuant to the Rules of Court and the Supreme Court mandate of In Re Armstrong, 126 CA 3d 565, 178 CR 902 (1981), and moves this Court for an Order directing that the entire Transcripts of Proceedings in the false and criminally-inspired

4/

and orchestrated trial proceedings, the subject of this appeal, be prepared and provided to Appellant at public expense and concurrently filed with the Appellate Department of the Superior Court to be used in the adjudication of Appellant's appeal now pending before this Court.

In support of the subject motion, Appellant shows the Court the imperative and indisputable need to have verbatim reporters' transcripts to document the gross criminal irregularities carried out against Appellant and the necessity to document a total failure and insufficiency of evidence by the People and reprehensible and gross prosecutorial and trial court prejudice, misconduct and fraud used to secure the false judgment and verdict now before this Court.

Appellant, in addition to making a prima facie showing for the need for said reporters' transcripts, also shows his Affidavit of Present Financial Indigency identified as EXHIBIT "A-1" and attached herewith and incorporated and made a part of his Declaration (EXHIBIT "A") documenting his incapacity to pay for said transcripts. That failure to accord Appellant a reporter's transcript and made a part of the Record on Appeal will result in irreparable injury to Appellant in the disposition of his appeal not yet submitted to this Court, and will grossly abridge his constitutional right to due process of law, as the certified "settled statement" prepared

42

by the trial court is a fraudulent, misrepresentation of the proceedings and evidence adduced at trial; that the purpose and objective of this appellate court will also be served by the preparation and filing of the Reporters' Transcripts, as said transcripts set forth "fairly and accurately" the evidence and proceedings below and fully demonstrate a total abrogation of this Appellant's constitutional rights at time of trial, as is more completely demonstrated in the grounds for appeal.

Said motion is based upon all papers, pleadings, documents, and the like on file herein--together with the Declaration of Appellant, identified as Exhibit "A" and the Memorandum of Points and Authorities attached herewith.

DATED: January 22, 1988

BY: _____
EUGENE JOHN CAPELLA

43

EXHIBIT A

47

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, declare and state as follows:

1. That I am the Appellant herein-defendant below.

2. That I am herewith and hereby specifically demanding that the Reporters' Transcript of Trial Proceedings, the subject of this appeal, be furnished to me and made a part of the Record on Appeal and filed with this Court forthwith.

3. That a true and correct copy of a Proposed Statement on Appeal and Notice to Prepare and Incorporate Reporters' Transcripts in Statement which was filed with the trial court on or about June 14, 1986 is identified as EXHIBIT "A-1" and attached herewith, consisting of nine (9) pages.

4. That these grounds for appeal have been certified by the trial court in the Statement on Appeal.

5. That a review of said Grounds for Appeal demonstrates twenty-four (24) separate grounds for appeal, several of which assert gross prosecutorial and trial court misconduct, fraud and prejudice which can only be evidenced by verbatim reporters' transcripts. (Grounds Nos. 7, 14, 15, 17, 18 and 22).

45

EXHIBIT "A"

6. That Appellant further urges this Court to throw out the bogus and false judgment and conviction of the trial court on the grounds of a "complete insufficiency of evidence" and failure of proof by the People (Ground No. 10, 18, 21) and that the trial court failed to allow and admit important evidence to support Appellant's defense (Ground No. 20); and committed gross irregularities and errors of constitutional proportion regarding the giving of prejudicial jury instruction (Ground No. 6); and refused to make other mandatory jury instructions required by her as a matter of law to protect Appellant's constitutional rights to a fair trial (Ground No. 5).

7. That the "settled statement" certified by the trial judge is gross and material misrepresentation of the evidence and proceedings occurring in the trial court, and is also lacking its requirement to set forth "concise factual summaries of each of the proceedings before the court from arraignment to judgment, including a recitation of the manner in which each of defendant's constitutional rights were protected." See, People v. Jenkins, 55 CA 3d, Supp. 55, 127, CR. 870 (1976).

8. That I have been the victim of a common enterprise of criminal racketeering utilizing various state and federal courts throughout the United States to deprive me of my attorney fees, costs, and contingency fees earned by and owed to me, and to destroy my livelihood, person, and

4/6

federal practice and reputation.

9. That the subject prosecution, the subject of this appeal, is but "one component" of this invidious criminal racketeering conspiracy orchestrated by state and federal officials.

10. That I am a distinguished legal advocate and recognized as such in Who's Who in American Law because of my contributions to the legal profession and that I was arguing a case in the United States District Court for the Central District of California on June 18, 1985 -- one (1) week before the false arrest.

11. That on or about January 20, 1988, a few days ago, I received word from the United States Supreme Court that my attempts to have the United States Court of Appeals for the Ninth Circuit act to grant me attorneys fees in this matter earned and owed to me and represented to be paid to me (now exceeding $200,000) was rejected. (A copy of said Supreme Court Order is identified as EXHIBIT "A-2" and attached herewith.

12. That I had fully intended to receive these monies, inasmuch as the District Court for the Central District of California authorized an "attorney lien" to protect my quantum meruit legal services in a successful ERISA (Employee Retirement Income Act of 1974) litigation

I conducted against General Electric Company, Inc., et al. on behalf of an asbestosis-affected pension plan beneficiary who had been cheated out of all his disability and retirement benefits, but now enjoys a substantial settlement on account of my legal efforts and time expended on his behalf.

13. That I have expended well in excess of $200,000.00 of monies (pro bono out-of-pocket monies) and in excess of $1 million of billable time on behalf of said client's seeking redress in the federal court system.

14. That in view of the Supreme Court's denial on January 11, 1987 directing that my fees be paid to me, I am now at this time financially incapacitated and indigent, having exhausted all of my resources on behalf of client causes.

15. That the enclosed "Declaration of Financial Condition" in support of my demand for a Reporter's Transcript at public expense is a true and correct statement of my financial condition at this time and I am unable to pay for the Reporters' Transcripts which I have been advised by the Court Reporter would be between $5,000-6,000.

16. That the Reporters' Transcripts of Proceedings are material and essential to adjudicate my appeal and will greatly assist the Court in its appellate decision-making and ensure the interest of justice.

17. That I further state that the subject trial proceedings before this Court were in furtherance of a criminal racketeering conspiracy authorized by the highest members of the Reagan Administration and done with the knowledge, consent and approval and affirmation of Ronald Reagan personally, together with other high-ranking members of the Administration and carried out against me--including, but not limited to, Edwin Meese, William French Smith and William Webster.

18. That it is <u>impossible</u> for me to have a fair appeal, hearing or fair adjudication or fair trial without the preparation of the Reporters' Transcripts at public expense and I have made a <u>prima facie</u> showing for their need before this appeal is submitted to the Court for adjudication.

19. That the prospect for my financial condition to improve in the next six to twelve months is extremely marginal, as the conspiracy to deprive me of all my legal fees and earnings and bar practice has been further amplified and exacerbated by the subject malicious false proceedings.

20. That there is no plausible reason the People can advance to deny the motion, inasmuch as I have alleged a/"misuse of criminal trial court proceedings" which Ira Reiner has a duty to investigate, and said trial transcripts demonstrate criminality in the conduct of the proceedings against me.

49

21. That I further specifically request that the Court direct Robert Morse, Court Reporter, to forthwith prepare the transcripts of trial proceedings set forth i. Pages 8, 9 of EXHIBIT "A-1" attached herewith.

22. That I further request that oral argument on the appeal scheduled for January 28, 1988 be continued for a period of sixty (60) days to allow the Court to receive and review the transcripts referenced herein.

I declare that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 25 day of January 1988 in Los Angeles, California.

EUGENE JOHN CARELLA, ESQ.

50

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Appellant, EUGENE J. CARELLA, ESQ., has alleged that the trial court proceedings and judgment of misdemeanor conviction for alleged "theft" of a rental automobile furnished to him pursuant to a written rental contract was in furtherance of a racketeering conspiracy designed to destroy Appellant's federal legal practice, to cheat him of legal fees and monies owed to him, to destroy his lawyering credentials, and to cover up high-level Administration criminal misconduct against him.

The Appellant has recited over twenty-four (24) grounds for appeal, requiring that the misdemeanor judgment and conviction be "thrown out the window" and vacated as a matter of law forthwith. The "settled statement" certified by the trial judge -- whose disqualification is one of the grounds for appeal -- is a rank fraud and grossly fails to state the evidence "fairly and truthfully" and is otherwise an inferior, ill-drafted and self-serving document not in conformity with the Rules of Court, Rule 183, et seq., or mandates governing the requirements of the settled statement. See, People v. Jenkins, supra. Furthermore, Appellant has now advised this Court that within the last two weeks he has learned that the Supreme Court has refused to act to overturn Judge Anthony Kennedy's Order cheating Appellant Attorney Carella of attorney

51

fees owed to him exceeding $200,000 as a result of his successful legal representation of a client against General Electric Company, Inc. for asbestosis disability. (Note Appellant was in the U. S. District Court at 312 N. Spring Street on June 18, 1985 -- one week before the subject false arrest for taking "a rental car," seeking to collect these very same legal fees.) Appellant has stated twenty-four (24) founds for appeal which demonstrate insufficient evidence, prosecutorial misconduct, fraud and conspiracy in jury selection, and gross misconduct in trial court's giving of "prejudicial jury instructions" and her refusal to make others. The grounds for appeal can only be adjudicated on the basis of verbatim reporters' transcripts. Appellant has made an overwhelming showing of the need for a verbatim reporters' transcript, and there is no way the People can overcome said showing or deny Appellant a verbatim reporters' transcripts without further violating Appellant's constitutional and civil rights and having this Court act to throw out the false conviction. See, March v. Municipal Court, 7 C.3d 422, 102 CR 597 (1972); Mayer v. Chicago, 404 U.S. 189 (1971); People v. Hosner, 15 C.3d 60, 64, 123 CR 381, 384 (1975).

Further, Appellant's current financial status as an indigent determines and activates his right to receive a transcript prepared at public expense automatically. Moreover, since Appellant has recited twenty-four (24) grounds for appeal of enormous breadth and scope, anything other than a complete reporters' transcript would be inadequate, under March,

52

supra, and any doubt that a complete transcript should be ordered and prepared, should be resolved in Appellant's favor.

The law in this State is crystal clear. Appellants, such as appellant herein, who are indigent must be provided a verbatim record and reporters' transcripts of proceedings for support, documentation and adjudication of his appeal upon request or demand, where he seeks to appeal a misdemeanor conviction. This has been the law in California since 1982 up and to the present date. In Re Armstrong, 126 CA 3d 565, 178 CR 902.

The grounds for appeal recited by Appellant in his Proposed Statement on Appeal certified by the trial court make a reporter's transcript absolutely imperative to ensuring Appellant's due process and equal protection guaranteed by the Fourteenth Amendment of the U. S. Constitution and the Constitution of this State.

CONCLUSION

FOR ALL THE REASONS advanced herein, Appellant respectfully prays his motion for Reporters' Transcripts at public expense be granted forthwith, and that the oral argument in the above-referenced appeal be continued for at least sixty (60) days to allow Robert Morse, Court Reporter, to prepare the actual reporters' transcripts.

Let an Order issue that Robert Morse prepare a

reporters transcript of the proceedings identified in Appellant's Notice to Prepare Transcripts filed June 14, 1986 (Pages 8, 9 of Exhibit "A-1" attached) and that said expense be borne by the State of California and that the oral argument scheduled in the subject appeal be continued for a period of sixty (60) days from January 28, 1988 to March 29, 1988; and for such further and additional relief the Court deems necessary and proper.

DATED: January 25, 1988

BY: _____
EUGENE JOHN CARELLA, ESQ.
Appellant

54

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

Appellant/Defendant

June 14 1986

IN THE MUNICIPAL COURT OF BEVERLY HILLS JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Respondent/Plaintiff vs. EUGENE JOHN CARELLA, Appellant/Defendant.	APPEAL NO. CRA 24001 LAMC No. M 83675 APPELLANT'S PROPOSED STATEMENT ON APPEAL AND NOTICE PREPARE AND INCORPORATE REPORTERS TRANSCRIPT IN STATEMENT.

COMES NOW EUGENE JOHN CARELLA, ESQ., pursuant to the Rules of Court, and does respectfully submit his within Proposed Statement on Appeal, together with his Notice to Prepare and Incorporate Reporters Transcript and Grounds for Appeal, more fully identified as EXHIBIT "A" attached herewith, and specifica prays that the Presiding Judge or Acting Presiding Judge forthwi certify said proposed statement and take such further action necessary to insure the interest of justice in light of Appellan continuing challenge and disqualification of the trial judge Judith O. Stein because of her gross bias, prejudice, ill will and hatred demonstrated against Appellant and in favor of the Pe

EXHIBIT "A"

55

Appellant also prays such further and additional relief necessary and proper in light of the circumstances presented herein, and to further supplement the subject proposed statement.

DATED: June 14, 1986

BY: _____
EUGENE JOHN CARELLA, ESQ.
Appellant

56

15

PROPOSED STATEMENT

Appellant specifically incorporates all those grounds for appeal hereinafter set forth, identified as Grounds 1 thru 23, and further specifically incorporates all those reporters transcripts of proceedings in accordance with his notice to prepare reporters transcript made a part hereof, and such further additions in accordance with law.

GROUNDS ON APPEAL

1. Appellant's right to a speedy trial guaranteed by state and federal constitutions was grossly abridged by the Court's denial of Appellant's Motion for Mandatory Dismissal pursuant to Section 1382 of the Penal Code, and said denial constitutes reversible error.

2. The trial court's failure to stand recused and disqualified in accordance with Appellant's Disqualification Petition and its failure to permit Petition to be filed or lodged constitutes reversible error.

3. Trial court's extreme and gross bias and hatred against Appellant and in favor of The People--including threats of oppression, incarceration and punitive fines--deprived Appellant his right to receive a fair trial and other constitutio rights.

4. Court's refusal to dismiss the Complaint and declare the statutory presumptions contained in Sec. 10855 of Vehicle Code and 484 of the Penal Code unconstitutional constitutes an abuse of discretion

57

16

and reversible error.

5. Trial court's refusal and failure to instruct the jury in accordance with Appellant's Written Jury Instructions and Charges filed by Appellant on March 18, 1986 and its failure to make any sua sponte instructions regarding Appellant' defense that "legal title and permission to the subject vehicle was entrusted to him pursuant to written contract" constitutes infirming reversible error.

6. Trial court's instruction to the jury over Appellant's continuing objection with respect to the presumptions contained in Vehicle Code Sec. 10855 and Penal Code Sec. 484, deprived Appellant of his constitutional rights to a jury trial and fair trial and otherwise constitutes fatal reversible error.

7. Trial court's refusal to admonish and prohibit the prosecution for its misconduct in presenting prejudicial charts and graphs not in evidence to the jury and prosecutor's referenc to such documents through the course of the trial and other prosecutorial misconduct constitutes infirming reversible error and denied Appellant's right to a fair trial.

8. Trial court's failure to grant Appellant's Motion to Dismiss on the grounds that the subject criminal proceeding is a prosecution for a "civil debt", for enforcement of a "civil contract," constitutes reversible error.

9. The court's refusal to dismiss the complaint on the grounds that the statutes in question are void for vagueness and

ambiguity thereby denying Appellant his due process rights constituting reversible error.

10. Trial court's refusal to grant Appellant's Motion to Dismiss at close of People's case on the basis of insufficient evidence constitutes reversible error.

11. Trial court's refusal to grant Appellant's Motion for Mistrial and for Motion for Judgment Notwithstanding the Verdict constitute prejudicial, reversible error and gross abuse of discretion.

12. Trial court's refusal to strike People's Jury Instructions or to Accord Appellant Hearing on Jury Instructions constituted prejudicial reversible error and abuse of discretion.

13. Trial court's refusal to grant Appellant a Probation Hearing and accord him a Pre-Sentencing Report after it had set the matter for probation hearing on May 13, 1986 -- together with arbitrary and capricious pre-sentencing conditions and revocation of Appellant's own recognizance status and placing him under excessive bail and physical danger constituted a denial of due process of law and is reversible error.

14. Trial court's denial of Appellant's Motion for Judgment in Arrest of Proceedings for Fraud and Trial Irregularities including jury tamperi and constituted reversible error.

15. Court's failure to properly arraign Appellant on the

subject charges--together with the failure of the Court to properly discharge its duties to Appellant at arraignment of sentencing and judgment denied Appellant his right to a fair trial.

16. Trial court's refusal to permit inquiry and questioning by Appellant into juror pool and the undue/restriction voir dire into bias and conflict of interests of jurors constitutes infirming reversible error.

17. The trial court ex parte, in collusion with The People, conspired to fix the jury pool and jurors assigned to the case, and the jury verdict entered on March 24, 1986 was secured by fraud, trickery, deceit and conspiracy between the trial court and The People and various jurors and alternate jurors.

18. The verdict of the jury entered on March 26, 1986 is unsupported by any evidence and was the product of a common enterprise to harm Appellant irreparably and his reputation and livelihood and secured by fraud.

19. The trial court's denial of Appellant's Motion For a New Trial constituted infirming reversible error.

20. The trial court's failure to admit Appellant's evidentiary exhibits and/or Take Mandatory Judicial Notice of Legal Proceedings in which Appellant was participating in California and other forums constituted infirming reversible erro

60

19

21. Trial court's refusal to Strike People's Evidentiary Exhibits that were NOT properly authenticated constituted infirming reversible error and should have been suppressed.

22. The trial court's imposition of sentencing Appellant to six (6) months in County Jail with no probation--together with three (3) years of parole--is a cruel, unusual punishment and in excess of the statute and unconstitutional, and must be vacated forthwith, especially in light of the fraud associated with the subject sentencing to prevent Appellant from prosecuting other matters as an attorney and/or plaintiff.

23. For such further grounds as appear from the Transcript of Evidence to be filed herein, including, but not limited to the fact that the subject arrest and consequent proceedings were a fraud, nullity and carried out in total absence of any probable cause and trial court's refusal to dismiss proceedings were in concert with third parties to harm and falsely imprison Appellant.

61

21

NOTICE TO PREPARE REPORTERS TRANSCRIPT

As part of his Proposed Statement, Appellant specifically gives notice to prepare and designate the following reporters transcripts and requests that said evidence be prepared, certified, and made a part of his statement herein:

1) All those pre-trial proceedings in the subject litigation occurring on June 27, 1985 in Division IV.

2) All those pre-trial proceedings in the subject litigation occurring on July 1, 1985 in Division IV.

3) All those pre-trial proceedings in the subject litigation occurring on August 9, 1985 in Division IV.

4) All those pre-trial proceedings in the subject litigation occurring on October 20, 1985 in Division IV.

5) All those pre-trial proceedings in the subject litigation occurring on December 2, 1985 in Division IV and Division V.

6) All those pre-trial proceedings in the subject litigation occurring on December 16, 1985 in Division V.

7) All those pre-trial proceedings in the subject litigation occurring on January 12 and January 13, 1986 in Division V.

8) All those pre-trial proceedings occurring in the subject litigation in Division II on March 7, 1986.

9) All those trial proceedings occurring in the subject litigation commencing on March 17, 1986 in Division V before Judith O. Stein with jury selection and voir dire and trial proceedings on March 18, 1986, March 19, 1986, March 20, 1986, March 21, 1986 and March 24, 1986.

10) All those proceedings occurring in the subject litigation on March 28, 1986 in Division V.

11) All those proceedings occurring in the subject litigation on April 4, 1986 in Division V.

12) All those proceedings occurring in the subject litigation on April 7, 1986 and April 8, 1986 in Division V.

DATED: June 14, 1986

BY: _____
EUGENE J. CARELLA, ESQ.
APPELLANT

63

22

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

January 11, 1988

Mr. Eugene John Carella
P. O. Box 67292
Los Angeles, CA 90067-0292

Re: Eugene J. Carella v. Billy M. Cooper
A-497

Dear Ms. Carella:

Please be advised that our letter to you dated December 29, 1987 was in error. Kindly note that your application to continue a stay pending the timely filing and disposition of a petition for a writ of certiorari in the above-entitled case has been presented to Justice O'Connor, who has endorsed thereon the following:

"Denied - SOC
12/24/87"

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk

By Edward L. Turner (

Edward L. Turner, Jr.
Assistant Clerk

kz
cc: Peter James, Esq.
Henry Giler, Esq.
Raoul Y. Roth, Esq.

EXHIBIT "A-2" 84

23

RETURN TO:

SUPERIOR COURT, APPELLATE DEPT.
ROOM 607, COUNTY COURTHOUSE
111 NORTH HILL STREET
LOS ANGELES, CA 90012

THIS FORM MUST BE KEPT CONFIDENTIAL

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
vs.
Eugene John Carella,
Defendant and Appellant.

Superior Court No. CR A 24001
Trial Court No. M 83675
Beverly Hills
(NAME OF MUNICIPAL COURT)

REQUEST FOR TRANSCRIPT AT PUBLIC EXPENSE AND DECLARATION OF FINANCIAL CONDITION

I request an order of the court directing preparation of Reporters' Transcripts at public/~~private~~ expense in my [appeal to the Superior Court] No 24001 filed on APRIL 7, 1986.

In support of the foregoing request, I declare:

1. My full name is Eugene (FIRST) John (MIDDLE) Carella (LAST)
2. My address is P.O. BOX 67292 (STREET NUMBER) Century City (STREET) (APT. NUMBER)
Los Angeles (CITY) California (STATE) 90067 (ZIP CODE) (PHONE NUMBER)
3. I am a person who does not have the money for Reporters' Transcripts without suffering money needed for the necessities of life and I do not have credit to borrow the needed sum.

[IMPORTANT: This document must be answered fully and honestly. Leaving blank spaces will result in a rejection or return for completion.] Put "none" or "not applicable" in all spaces not otherwise filled in.

1.5

EXHIBIT "A-3"

24

D. *INCOME OTHER THAN EMPLOYMENT INCOME*

	Yourself	Spouse
Any other income. (List all sources of income here, other than wages, including aid for dependent children; Social Security; rents; dividends; interest; pensions; trusts; or money from any source.)		
1. None		
2.		
3.		

E. *ASSETS*

				Yourself	Spouse
Savings Accounts				None	
Checking Accounts				None	
Credit Union(s)				None	
Bonds and Stocks				None	
Home (market value)	None				
Home loan balance	( )		NET:	None	
Other real estate (market value)	None				
Loan balance	( )		NET:	None	
Furniture					
Vehicles (net value after deducting loan balances)					
Auto(s)	(make)	(year)		None	
	(make)	(year)			
Truck(s)	(make)	(year)		None	
Motorcycle(s)	(make)	(year)		None	
Other property (boats, etc.)				None	
Retirement fund – vested interest				None	
TOTAL ASSETS				None	

///

6.

26

4. The names and ages of my dependents are:

Name	Age
None	

5. Crime which I was convicted of: Theft of motor vehicle

Nature: automobile furnished to me pursuant to rental contract

6. Name and address of attorney who represented me at the trial was:

N/A

7. Describe briefly what attempts you have made to find a lawyer to handle this appeal for you, and why you cannot get your own lawyer. N/A

I declare under penalty of perjury that the foregoing is true, and that this declaration was executed on January 25, 1989, at Los Angeles, California.

Evgen Jon Cmaus
(Type or print name)

(Signature of applicant)

57

24

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this the___day of January 1988 I served a true copy of Appellant's Motion and Demand for Reporters Transcripts at Public Expense; Declaration of Eugene J. Carella; Memorandum of Points and Authorities on all parties of record by first class mail, postage prepaid, in Los Angeles, California, on the following:

IRAN REINER
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90014

L-8

FILED

JAN 26 1988

FRANK A. MCGUIRE, County Clerk

Alan Handley

BY ALAN HANDLEY, DEPUTY

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs EUGENE JOHN CARELLA, Defendant and Appellant.	Superior Court No. CR A 24001 Municipal Court of the Beverly Hills Judicial Dist. No. M 83675

ORDER

THE COURT*

Appellant's Motion and Demand for Reporters Transcripts at Public Expense, filed January 26, 1988, having been read and fully considered,

IT IS ORDERED that said motion and demand is hereby denied.

Margolis Woods

* Before Margolis, P. J. and Woods, J.

19

P 725 445 079

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

FOR DOMESTIC MAIL ONLY

Sent to	Richard Bretzling
	Special Agent-In-Charge
	FBI
Street and No.	11000 Wilshire Blvd.
P.O., State and ZIP Code	Los Angeles, CA. 90024
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$

PS Form 3800, June 1985

SENDER: Complete items 1, 2, 3, and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fee.

1. ☒ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:
Richard Bretzling, Special Agent-in-Charge, Federal Bureau of Investigation, 11000 Wilshire Blvd., Los Angeles, CA 90024

4. Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number
P 725 445 079

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
X

6. Signature - Agent
X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, July 1983 DOMESTIC RETURN RECEIPT

70

Eugene J. Canella
ATTORNEY AT LAW

March 10, 1988

Certified No P 725 544 507

Richard Bretzling
Special Agent-in-Charge
Federal Bureau of Investigation
11000 Wilshire Boulevard
Los Angeles, California 90024

Re: Criminal Abuse of Judicial Process

Dear Mr. Bretzling:

On February 26, 1988, I contacted your office concerning a continuing criminal conspiracy carried out by the Central Intelligence Agency, National Security Council, and various departments of the United States Department of Justice to have me falsely arrested, falsely convicted and falsely imprisoned on a misdemeanor charge emanating from a rental of a rental car pursuant to a written rental contract in March 1985. I have also been in touch with Mr. Pence, your counterpart in the Denver, Colorado office and Mr. Richard Schusher, special agent, assigned to investigate the criminal misuse of the Colorado State Bar disciplinary proceedings in Denver, Colorado seeking to further injure my career, reputation, professional licenses to practice law in furtherance of this criminal civil rights and racketeering conspiracy directed against me of which your Washington, D.C. main office has been apprised previously. I had visited your offices back in 1976-77 after the filing of major ERISA (Employee Retirement Income Security Act of 1974) litigation when I encountered destruction of various other litigations seeking redress for various harms on behalf of my clients and, unfortunately, myself for my commitment to implementing this statute on behalf of my clients, and also filed personal written complaints with your Westwood office in December 1979, May 1981, June 1981, September 1983 and made other contacts therewith and with the U. S. Department of Justice.

I am enclosing various documents and papers which relate to a criminal interference in the adjudication of my cause on appeal from my false arrest and false conviction and, specifically, the "fixing and tampering" of proceedings by Superior Court judges to deny me proper access and equal protection and due process of law accorded others in the legal system. Judges Newman, Woods, Robertson, Margolis and Clerk Alan Hardy as well as various Court of Appeal judges, Second Appellate District, Fukuto and Gates, in particular. There is now a criminal abrogation

71

of the disqualification statute of this State in furtherance of the criminal racketeering conspiracy against me, with full knowledge of this fact being carried out by the aforenamed judges and others. I am requesting your office's intervention to stop this gross criminal perversion of our federal laws and the Constitution.

I will contact you to arrange for a personal visit with you to further embellish these most serious matters.

Very truly yours,

Eugene J. Carella, Esq.
a Colorado Attorney
P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

cc: Files (4); RCO

Enclosures

72

Eugene J. Corello
ATTORNEY AT LAW

CERTIFIED No: P 725 445

March 10, 1988

Judicial Council of the
State of California
350 McAllister Street
Room 3154
San Francisco, California 94102

Attention: William Davis, Executive Officer

Dear Sir:

On two separate occasions, on February 27, 1988 and again on March 4, 1988, I respectfully demanded that you and the Judicial Council execute your responsibilities mandated and owed to me as a citizen of the State of California under the provisions of the disqualification statutes of this State and Rules of Court which govern the disqualification of all Superior Court judges in the State of California and define your responsibilities as Executive Officer of the Judicial Council.

In my February 27, 1988 letter, I enclosed copies of my "Appellant's Motion for Disqualification of Jack Newman, Alfred Margolis, Frederick Woods, Robert Robertson, Judges of the Los Angeles Superior Court (Appellate Department)" filed February 5, 1988 and "Appellant's Formal Statutory Demand to Clerk of Los Angeles Superior Court (Appellate Department) Advising Judicial Council to Select Judge to Adjudicate Disqualification filed February 17, 1988."

In my March 4, 1988 letter I enclosed my Petition for Rehearing and Application for Transfer to Court of Appeal filed February 18, 1988 and the Declarations of Respondents Margolis, Newman, Robertson and Woods filed by them on February 12, 1988 in answer to my moved for disqualification of them filed February 5, 1988 as aforereferenced. Said verified answer by Respondents was pursuant to § 170.3(c)(3) of the Disqualification Statute. Clearly, Respondents sought to invoke and rely upon the statute because there is no question that as Los Angeles Superior Court judges they are subject to its language and provisions. Section 170.5 makes this fact profusely clear. "For purposes of Sections 170 to 170.5 inclusive, the following definitions apply: 'Judges' means "judges of the justice, municipal and superior courts and court commissioners and referees." The Respondents in their answer affirmatively admitted that "each is a judge of the Superior Court of the State of California for the County of Los Angeles." Furthermore, the legislature clearly

galvanized Los Angeles Superior Court judges sitting as the appellate department from § 170.6 challenges only [see § 170.7] and it is overwhelmingly clear from other provisions of the statute that the legislature distinguishes between § 170.3 (statutory cause) and § 170.6 (preemptory) disqualification challenges.

For instance, with respect to a challenge which can be made against a judge appointed by the Judicial Council to adjudicate the disqualification question, the legislature stated..."No challenge pursuant to Subdivision (c) of Section 170.3 or Section 170.6 may be made against the judge selected to decide the question of disqualification." [Section 170.3(c)(5)].

The rule of ejusdem generis applied to § 170.7 makes it conclusive that by exempting Los Angeles Superior Court judges sitting in the Appellate Department from § 170.6 challenges only, the legislature clearly intended them to be otherwise vulnerable to § 170.3 statutory cause challenges which is perceived as a discreet statutory challenge by them.

Indeed, the very language and statutory grounds expressed in § 170.1 (one thru seven) also commands a similar result: That statutory grounds for disqualification apply to and contemplate Los Angeles Superior Court judges such as Respondents named herein acting in the appellate department of said Los Angeles Superior Court.

I have received your letter of March 3, 1988 and regretably find it to be completely and wholly insufficient on a professional and legal basis in that you have consciously refused to exercise your responsibilities under law which you and the Judicial Council owe me. The Rules of Court, and Rule 63, make it clear that when Los Angeles Superior Court judges sitting in appellate department are disabled from acting or cannot act, on the requested transfer (filed February 18, 1988), the Judicial Council must act to select a judge to adjudicate the requested application for transfer to the Court of Appeal. Section 170.4 states:

> "A disqualified judge shall have no power to act in any proceeding after his or her disqualification or after the filing of a statement of disqualification until the question of his or her disqualification has been determined."

The motion for disqualification and supporting statement was filed on February 5, 1988 and remains unadjudicated because of the concerted action by your office, Respondent Clerk Hardy, and Respondent judges Margolis, Newman, Woods, and Robertson in obstructing presentation of my demand to the Judicial Council in accordance with law.

Since your letter of March 3, 1988 evidences an adamant unwillingness to appoint a judge to act on my statutorily-ordained demands, I am cogently legally persuaded that all orders of Respondents are null and void, and that Respondent Clerk and Respondent judges making and entering of orders known to be of no legal force or validity and false, are otherwise designed to criminally interfere with the exercise of my equal protection, due process rights of the laws of this state and of the United States. Accordingly, I must hold those personally involved criminally responsible and accountable for their conduct.

I again urge you to act to avoid further irreparable injury to me and personal liability to you and other members of the Judicial Council who, of course, enjoy no judicial immunity for their conscious abuse associated with this enterprise. Further, it is my position that the statutory bar to further action by Respondent judges occurred on February 5, 1988 (when motion for disqualification was filed), and is in force up and to the present time.

I remain,

Very truly yours,

Eugene J. Carella, Esq.
(A Colorado attorney)

P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

cc: Files (4); RCO

95

CHIEF JUSTICE
MALCOLM M. LUCAS
CHAIRPERSON

JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS
STATE BUILDING, ROOM 3154
350 McALLISTER STREET, SAN FRANCISCO 94102 • (415) 557-3203

LEGISLATIVE OFFICE
100 LIBRARY AND COURTS BUILDING, SACRAMENTO 95814 • (916) 445-7524

WILLIAM E. DAVIS
DIRECTOR

BURTON W. OLIVER
CHIEF DEPUTY DIRECTOR

March 3, 1988

Mr. Eugene J. Carella
Attorney at Law
P.O. Box 67292
Century City Station
Los Angeles, California 90067-0292

Re: Carella v. People of the State of California
Los Angeles Municipal Court No. M 83675
(Beverly Hills) -- Appeal No. CBA 24001

Dear Mr. Carella:

We have received your inquiry requesting that the Judicial Council stay the appellate proceeding described above and that a judge be assigned to resolve the question of the disqualification of all of the judges of the Los Angeles Superior Court Appellate Department to consider the appeal in your case.

We regret that we are unable to assist you and that we have no power to do as you request. Although this office is similarly not empowered to render legal opinions in pending litigation, we offer some information that may be helpful to you in understanding why we are unable to take the action you so urgently request.

First, under the statutory scheme for the disqualification of judges, it is the court, not counsel or the parties, that forwards a request for assignment of a judge to a) hear the disqualification issue (See Code of Civil Procedure section 170.3(c)(5)) or b) handle the proceeding if no judge in the court is qualified to act (See Code of Civil Procedure section 170.8.) Accordingly, it is our office policy to assist the Chief Justice in issuing assignments only in response to requests for assistance from the courts. This office does not act upon requests from individual litigants or their attorneys.

76

Secondly, there is nothing in the statute that confers upon the Judicial Council the power to stay an action pending in any court. Indeed, the Judicial Council is not a court, and it would appear has no power to issue stays under any circumstances.

We have been informed by Mr. Alan Hardy, clerk of the appellate department of the Los Angeles Superior Court, that it is the court's position that there is no basis for requesting assignment of a judge in this case because the statutory scheme for motions to disqualify judges does not apply to appellate judges. (See for example Kaufman v. Court of Appeal (1982) 31 Cal.3d 933.) If in the future the clerk or a judge from the Los Angeles Superior Court does request assignment in this matter, we will be happy to take the necessary steps to assure that a judge is assigned in a timely manner.

We regret that we are unable to assist you further.

Very truly yours,

William E. Davis
Director

WED:ecr
0396C

77

Eugene J. Carella
ATTORNEY AT LAW

CERTIFIED No: P 047 780 553

For Immediate Attention:

March 4, 1988

Judicial Council of the State of California
350 McAllister Street
Room 3154
San Francisco, California 94102

Attention: William Davis, Executive Officer

Dear Sir:

Enclosed please find a copy of my letter dated February 27, 1988 and received by your office the morning of March 2, 1988. In my letter I demanded immediate intervention and action by the Judicial Council in accordance with the Rules of Court and the laws of this State.

I am forwarding you additional documents pertinent to the responsibilities of the Judicial Council on this matter, and I am specifically requesting that action be commenced at the earliest possible time by the Council.

I am enclosing the Declarations of Respondents Margolis, Newman, Robertson, Woods filed February 12, 1988 in response to my Motion for Disqualification filed and served on them on February 5, 1988. The declaration in Paragraph One (1) states as follows:

"That each of the undersigned is a Judge of the Superior Court of the State of California for the County of Los Angeles." This admission is conclusive as to the applicability of the disqualification statute to them. (See, § 170.5 - Definitions).

Further, I am forwarding you copies of "Appellant's Petition for Rehearing and Application for Transfer" which I timely filed with the Clerk subsequent to the Motion for Disqualification on February 5, 1988. Since the Respondent Los Angles Superior Court judges are without power or authority to act on the transfer or rehearing, I am specifically requesting that pursuant to Rules of Court § 6243 that a panel be appointed by the Judicial Council to act on the subject document who is free from bias, hatred, discrimination that has been carried out against me. I am also enclosing the nullity order of the Los Angeles Superior Court judges entered February 24.

78

1988, denying all the relief in the aforereferenced petition for rehearing and application for transfer as evidence of judicial fraud and criminal misuse of process which has been precipitated against me and continues to the present time.

Again, I affirm the necessity for swift action by the Judicial Council in accordance with law and request an evidentiary hearing on the Motion for Disqualification (filed February 5, 1988) and a hearing on the within enclosed Petition for Rehearing and Application for Transfer (filed February 16, 1988). [See Amo & 170.8]

I also specifically demand the enclosed documents be made a part of the evidentiary documents supporting the disqualification of the aforenamed Superior Court judges.

I look forward to your expedited response to the foregoing.

Thank you for your attention to this matter.

I remain,

Very truly yours,

EUGENE JOHN CARELLA, ESQ.

P. O. Box 67292
Century City
Los Angeles, CA 90067-0292

cc: Files (4)

ENCLOSURES

P. S. Also enclosed is my biographical summary of my background for the Judicial Council's edification.

79

Eugene J. Carella
ATTORNEY AT LAW

February 27, 1988

Judicial Council of the State of California
350 McAllister Street
Room 3154
San Francisco, California 91402

Attention: William Davis, Executive Officer
For Immediate Action

Dear Sir:

Enclosed you will find two (2) conformed documents filed with the Clerk of the Los Angeles Superior Court styled as follows: "Appellant's Motion for Disqualification of Jack Newman, Alfred Margolis, Frederick Woods, Robert Robertson, Judges of Los Angeles Superior Court Appellate Department," filed February 5, 1988; and "Appellant's Formal Statutory Demand to Clerk of Appellate Department of Los Angeles Superior Court Advising Judicial Council to Select Judge to Adjudicate Disqualification," filed February 17, 1988, pursuant to Rule 170.3(c)(5)(6).

On Friday, February 26, 1988, when I sought verification from the Clerk of the Los Angeles Superior Court Appellate Department as to when the aforereferenced Motion for Disqualification was transmitted to the Judicial Council, I was brazenly informed by Alan Hardy, Chief Deputy Clerk of said Court, that he refused to do so despite his mandatory duties under the Rules of Court and would continue to do so, notwithstanding the Disqualified Judges filed an Answer to the Motion for Disqualification admitting various charges in the motion.

Further I advised Mr. Hardy that his actions were criminal in nature and that he was acting with conscious awareness and in furtherance of a criminal racketeering conspiracy orchestrated against me. After my conversation with Mr. Hardy, I forthwith contacted the Federal Bureau of Investigation to apprise them personally of the criminal conspiracy carried out against me in Case No. M 83675 and Appeal No. A 24001.

I contacted your office on Friday afternoon and was apprised that you were away from your office. I

80

did, however, leave a formal message with your Assistant May of the need for swift action by your office.

This letter, together with the attached enclosed, represents formal demand by me that the Judicial Council act immediately on "A Time of the Essence Basis" to "Stay All Process In the Appeal and Trial Court" pending investigation by your office into these most serious criminal irregularities of process and until such time as a judge has been appointed by the Council to adjudicate the merits of my Disqualification Motion and has afforded me the evidentiary hearing requested by me to document the moved for disqualification. The entire legal process, and each of us, suffers irreparably when contemptuous disregard and abuse of the Rules of Court, laws of this State and provisions of federal constitution, such as those contained herein, are permitted to exist uncorrected.

I look forward to immediate confirmation that my motion has been placed on calendar for hearing and adjudication before a judge appointed by the Judicial Council impartial and able to determine the motion fairly and free from bias, prejudice and discrimination and in accordance with law, and that the Judicial Council has communicated an Order both to the Los Angeles Superior Court Appellate Department and Judith Stein, trial judge of the Los Angeles Municipal Court, Beverly Hills Judicial District, staying all orders and actions until further order of the Judicial Council.

I am most emphatic in advising you and the Council that I am the subject of a vicious, heinous criminal abuse of process by both the trial judge of the Los Angeles Municipal Court, Beverly Hills Judicial District, and the judges who are the subject of the disqualification motion enclosed, acting in concert to deprive me of my civil and constitutional rights, due process and equal protections under the law.

I eagerly await your response.

Very truly yours,

Eugene John Carella, Esq.
A Colorado Attorney

P. O. Box 67292
Century City Station
Los Angeles, CA 90067-0292

cc: Files (4)

8J.

"Sec. 416. Any section of any act enacted by the Legislature during the 1982 portion of the 1981–82 Regular Session, which takes effect on or before January 1, 1983, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether such act is enacted prior to or subsequent to this act."

Cross References

Costs, taxation by judge at chambers, see § 1033.
Duties of judge in regard to inventory and appraisement of estates, see Probate Code § 600 et seq.
Judges, chambers, rules and hours, see Government Code § 24301.
Justice courts statutes time prohibitions, see § 1163.
Mandamus, not issuable to justice or municipal courts, see § 1085.
Motions to be made to court to which action pending, exceptions under this section, see § 1008.
Municipal court statutes time prohibitions, see § 1163.
Orders for production of will, see Probate Code § 321.
Probate of wills, see Probate Code § 320 et seq.
Prohibition, not issuable to justice or municipal courts, see § 1103.
Writ of review, not issuable to justice or municipal courts, see § 1068.

§ 167. Performance of acts of clerk

Any act required or permitted to be performed by the clerk of a court may be performed by a judge thereof, and shall be performed by a judge in any court having no clerk. *(Added by Stats.1969, c. 1610, § 1.)*

Former § 167 was repealed by Stats.1933, c. 743, § 61.

CHAPTER 3. DISQUALIFICATIONS OF JUDGES

Section
170 Duty to decide.
170a, 170b Repealed.
170.1 Grounds for disqualification.
170.2 Circumstances not constituting grounds for disqualification.
170.3 Proceedings, waiver, failure or refusal to withdraw.
170.4 Powers of disqualified judges.
170.5 Definitions.
170.6 Procedure against party, attorney or counsel thereof; motions and affidavits, assignment of another judge, court commissioner or referee; number of motions; exceptions; exclusive remedy; severability.
170.7 Judge serving on appellate department; application of section 170.6.
170.8 No qualified judge, assignment of judge.
171 to 173. Repealed.

§ 170. Duty to decide

A judge has a duty to decide any proceeding in which he or she is not disqualified. *(Added by Stats. 1984, c. 1555, § 2.)*

Former § 170 was repealed by Stats. 1984, c. 1555, § 1. See, generally, §§ 170.1, 170.3.

Cross References

Affinity, defined, see § 17.
Change of place of trial, see §§ 397, 398.
Degree of consanguinity relationship, see Probate Code § 251 et seq.
Disqualifications of judge in probate proceedings, see Probate Code § 303.
Judge as relative or associate of appraiser of estates, see Probate Code § 608.
Practice of law by judges, see Government Code §§ 68082, 68083.
Prejudice against party, attorney or counsel thereof, exclusive remedy, see § 170.6.
Relationship between judge and receiver, see § 566.

§ 170a. Repealed by Stats.1984, c. 1555, § 3

§ 170b. Repealed by Stats.1933, c. 743, § 61

§ 170.1. Grounds for disqualification

(a) A judge shall be disqualified if any one or more of the following is true:

(1) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(A) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law; or

(B) A lawyer in the proceeding was associated in the private practice of law with the judge.

A judge who served as a lawyer for or officer of a public agency which is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(A) A spouse or minor child living in the household has a financial interest; or

(B) The judge or the spouse of the judge is a fiduciary who has a financial interest.

A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of

52

the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) For any reason (A) the judge believes his or her recusal would further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court. *(Added by Stats. 1984, c. 1333, § 3.)*

Former § 170.1 was repealed by Stats. 1984, c. 1333, § 4.

Cross References

Affinity, defined, see § 17.
Each generation a degree, see Probate Code § 251.

§ 170.2. Circumstances not constituting grounds for disqualification

It shall not be grounds for disqualification that the judge:

(a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group.

(b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in paragraph (2) of subdivision (a) of, or subdivision (b) or (c) of, Section 170.1.

(c) Has as a lawyer or public official participated in the drafting of laws or in the effort to pass or defeat laws, the meaning, effect or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known as to [illegible] a reasonable person in the public [illegible] his or her capacity to be impartial. *(Added by Stats. 1984, c. 1333, § 4.)*

§ 170.3. Proceedings; waiver; failure or refusal to withdraw

(a)(1) Whenever a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal and shall not further participate in the proceeding, except as provided in Section 170.4, unless his or her disqualification is waived by the parties as provided in subdivision (b).

(2) If the judge disqualifying himself or herself is the only judge or the presiding judge of the court, the notification shall be sent to the person having authority to assign another judge to replace the disqualified judge.

(b)(1) A judge who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification. A waiver of disqualification shall recite the basis for the disqualification, and is effective only when signed by all parties and their attorneys and filed in the record.

(2) The judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver of disqualification.

(3) In the event that grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification is waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge.

(c)(1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement, admitting or denying that [illegible] material or relevant to the question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

(5) No judge who refuses to recuse himself or herself shall pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement

§3

of disqualification filed by a party. In every such case, the question of disqualification shall be tried and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice-chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge pursuant to subdivision (c) of Section 170.3 or Section 170.6 may be made against the judge selected to decide the question of disqualification.

(b) The judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and answer and such written arguments as the judge requests, or the judge may set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge shall permit the parties and the judge alleged to be disqualified to argue the question of disqualification and shall for good cause shown hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge as provided in subdivision (a) of Section 170.3.

(d) The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought within 10 days of notice to the parties of the decision and only by the parties to the proceeding. *(Added by Stats. 1984, c. 1555, § 7.)*

§ 170.4. Powers of disqualified judges

(a) A disqualified judge, notwithstanding his or her disqualification may do any of the following:

(1) Take any action or issue any order necessary to maintain the jurisdiction of the court pending the assignment of a judge not disqualified.

(2) Request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Hear and determine purely default matters.

(4) Issue an order for possession prior to judgment in eminent domain proceedings.

(5) Set proceedings for trial or hearing.

(6) Conduct settlement conferences.

(b) Notwithstanding paragraph (5) of subdivision (a) of Section 170.3, if a statement of disqualification is untimely filed or if on its face is discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken.

(c)(1) If a statement of disqualification is filed after a trial or hearing has commenced by the start of voir dire, by the swearing of the first witness or by the submission of a motion for decision, the judge whose impartiality has been questioned may order the trial or hearing to continue, notwithstanding the filing of the statement of disqualification. The issue of disqualification shall be referred to another judge for decision as provided in subdivision (a) of Section 170.3, and if it is determined that the judge is disqualified, all orders and rulings of the judge found to be disqualified made after the filing of the statement shall be vacated.

(2) For the purposes of this subdivision, if (A) a proceeding is filed in a single judge court or has been assigned to a single judge for comprehensive disposition, and (B) the proceeding has been set for trial or hearing 30 or more days in advance before a judge whose name was known at the time, the trial or hearing shall be deemed to have commenced 10 days prior to the date scheduled for trial or hearing as to any grounds for disqualification known before that time.

(3) A party may file no more than one statement of disqualification against a judge unless facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed.

(d) Except as provided in this section, a disqualified judge shall have no power to act in any proceeding after his or her disqualification or after the filing of a statement of disqualification until the question of his or her disqualification has been determined. *(Added by Stats. 1984, c. 1555, § 8.)*

§ 170.5. Definitions

For the purposes of Sections 170 to 170.5, inclusive, the following definitions apply:

(a) "Judge" means judges of the justice, municipal, and superior courts, and court commissioners and referees.

(b) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars ($1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(c) "Officer of a public agency" does not include a Member of the Legislature or a state or local government official acting in a legislative capacity.

84

d) The third degree of relationship shall be calculated ...ding to the civil law system.

...) "Private practice of law" includes a fee for service, ...ner, or salaried representation of private clients or ...ic agencies, but excludes lawyers as full-time employ... of public agencies or lawyers working exclusively for ... ted offices, public defender offices, or similar profit entities whose clientele is by law restricted to ...ndigents.

...) "Proceeding" means the action, case, cause, mo... or special proceeding to be tried or heard by the ...r.

...) "Fiduciary" includes any executor, trustee, guardi... or administrator. *(Added by Stats. 1984, c. 1555, ...)*

...tion § 170.5 was repealed by Stats. 1999, c. 1099, § 1.

170.6. Prejudice against party, attorney or interest ...therof; motion and affidavit; assignment of anoth... or judge, court commissioner or referee; number of motions; continuance; cumulative remedy; severability

...) No judge, court commissioner, or referee of any ...rior, municipal or justice court of the State of ...fornia shall try any civil or criminal action or special ...ceeding of any kind or character nor hear any matter ...rein which involves a contested issue of law or fact ...n it shall be established as hereinafter provided that ... judge or court commissioner is prejudiced against ... party or attorney or the interest of any party or ...ney appearing in such action or proceeding.

...) Any party to or any attorney appearing in any ... action or proceeding may establish such prejudice ... oral or written motion without notice supported by ...avit or declaration under penalty of perjury or an ...statement under oath that the judge, court commis... or referee before whom such action or proceeding ...nding or to whom it is assigned is prejudiced against ...such party or attorney or the interest of such party or ...ney so that such party or attorney cannot or believes ...he cannot have a fair and impartial trial or hearing ...e such judge, court commissioner, or referee. ...e the judge, court commissioner, or referee assigned ... who is scheduled to try the cause or hear the matter ...own at least 10 days before the date set for trial or ...ng, the motion shall be made at least five days ...re that date. If directed to the trial of a cause where ... is a master calendar, the motion shall be made to ...dge supervising the master calendar not later than ...me the cause is assigned for trial. If the court in ... the action is pending is authorized to have no ... than one judge and the motion claims that the duly ...ed or appointed judge of that court is prejudiced, the ...on shall be made before the expiration of 30 days ... the date of the first appearance in the action of the ... who is making the motion or whose attorney is ...ng the motion. In no event shall any judge, court ...missioner, or referee entertain such motion if it be ... after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there be no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion must be made not later than the commencement of the hearing. In the case of trials or hearings set herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If such motion is duly presented and such affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chairman of the Judicial Council shall assign some other judge, court commissioner, or referee to try such cause or hear such matter as promptly as possible. Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

85-

State of California, County of } ss. PEREMPTORY CHALLENGE

_____ being duly sworn, deposes and says: That he is a party (or attorney for a party) to the within action (or special proceeding). That _____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned), is prejudiced against the party (or his attorney) or the interest of the party (or his attorney) so that affiant cannot or believes that he cannot have a fair and impartial trial or hearing before such judge, court commissioner, or referee.

_____

Subscribed and sworn to before me this _____ day of _____ 19_____.

(Clerk or notary public or other officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(7) Nothing in this section shall affect or limit the provisions of Section 170 and Title 4, Part 2, of this code and this section shall be construed as cumulative thereto.

(8) If any provision of this section or the application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable. *(Added by Stats.1957, c. 1033, § 1. Amended by Stats.1959, c. 640, § 1; Stats.1961, c. 526, § 1; Stats.1965, c. 1442, § 1; Stats.1967, c. 1602, § 2; Stats.1970, c. 1071, § 1; Stats. 1981, c. 192, § 1; Stats.1982, c. 1644, § 2; Stats.1985, c. 715, § 1.)*

Cross References

Compulsory attendance, reference hearings, motion, see Welfare and Institutions Code §§ 650, 661, 700.2.
Disqualification of arbitrator, application of this section, see § 1141.10.
"Oath", defined, see Penal Code § 119.
Subornation under oath, perjury, see Penal Code §§ 118, 121, 125.

§ 170.7. Judge serving on appellate department; application of section 170.6

Section 170.6 does not apply to a judge designated or assigned to serve on the appellate department of a superior court in his capacity as a judge of such department. *(Added by Stats.1963, c. 872, § 1.)*

§ 170.8. No qualified judge; assignment of judge

When there is no judge of a court qualified to hear an action or proceeding, the clerk or, if there be no clerk, the judge shall forthwith notify the Chairman of the Judicial Council of that fact. The judge assigned by the Chairman of the Judicial Council shall hear the action or proceeding at the time fixed therefor or, if no time has been fixed or good cause appears for changing the time theretofore fixed, the judge shall fix a time for hearing in accordance with law and rules and hear the action or proceeding at the time so fixed. *(Added by Stats.1963, c. 872, § 2.)*

§§ 171 to 173. Repealed by Code Am.1880, c. 35, § 1; Stats.1963, c. 206, § 7

See, now, Gov.C. §§ 68082, 68083.

CHAPTER 4. INCIDENTAL POWERS AND DUTIES OF JUDICIAL OFFICERS

Section
176. Repealed.
177. Conduct of proceedings.
177.5. Money sanctions.
178. Punishment for contempt.
179. Taking and certifying acknowledgments, affidavits or depositions.

§ 176. Repealed by Stats.1933, c. 743, § 61

See, now, § 166.

§ 177. Conduct of proceedings

Every judicial officer shall have power:

1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

2. To compel obedience to his lawful orders as provided in this Code;

3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this Code;

4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties. *(Enacted 1872. Amended by Code Am.1880, c. 35, § 1.)*

Cross References

Abuse of process a contempt, see § 1209.
Acts or omissions contemplation of court's authority, see § 1209.
Affirmation, see §§ 2093, 2097.
Contempt for disobedience of subpoena, see §§ 1209, 1991.
Contempt in court's presence, see § 1211.
Judicial officer, defined, see Elections Code § 20.
Oath, see § 2093 et seq.
Refusal of witness to be sworn, see § 1991.
Security required for breach of peace in court's presence, see Penal Code § 710.
Similar provisions, see § 128.
Subpoenas, in general, see § 1986.
Witnesses,
Attendance from outside county, see § 1989.
Compelling attendance in election contests, see Elections Code § 20082.

§ 177.5. Money sanctions

A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the

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213-458-5281
213-458-5272
213-458-5265
213-458-5260
226-2917
226-2924
226-2929

Hours: Monday through Thursday, Law & Motion, 9:00 A.M., Dept. R
Writs, Receivers and Ex Parte, Daily, 10:00 A.M. to 11:00 A.M., Dept. R

Location of Special Departments — Central District

(Except where noted, telephone 974-5411)

	Building	Dept.	Room	Phone
Presiding Judge	Courthouse		204	974-5564
Assignments & Miscellaneous Matters	Courthouse	43	419	974-5661
Appeals	Courthouse	70	607	974-5781
Attorney Admissions	Courthouse		216	974-5425
Civil Defaults Prove-Up	Courthouse	1A	2068	974-5796
Civil Courts Coordinator	Courthouse		209	974-5408
Civil Master Calendar Office	Courthouse	1	234	974-5466
Civil Master Calendar Courtroom Office	Courthouse	1	222	974-5561
Commissioners' Office, Ex Parte	Courthouse	1A	206	974-5475
Court Reporter and Assignments	Courthouse		216	974-5451
Criminal Master Calendar	Criminal Courts Bldg.	100	13-307	974-5711
Criminal Courts Coordinator	Criminal Courts Bldg.		13-309	974-5811
Eminent Domain	Courthouse	90	518	974-5883
Family Law Dept.				
Dissolutions, Nullity Proceedings, Contested Trials, OSC	Courthouse	2	215	974-5566
Conciliation Court	Courthouse		241	974-5524
Interpreter Assignments	Criminal Courts Bldg.		13-514	974-5446

	Building	Dept.	Room	Phone
Juvenile Courts Delinquency Coordinator	Criminal Courts Bldg.		12-A	974-5961
Juvenile Courts Dependency Coordinator	Criminal Courts Bldg.		12-A	974-5961

Law Department	Information			974-5158
				Telephonic
Supervising Judge	Clerk	Tentative Rulings	Room	Arguments
Department 86	974-5175		535	620-9463
Department 80	974-5787		539	
1-25 Department 81 –	974-5798	974-5918	631	617-1796
26-50 Department 82	974-5888	974-5916	633	617-1797
51-75 Department 83	974-5886	974-5913	630	617-2927
76-00 Department 84	974-5887	974-5912	632	617-9327
Management Systems Division	Courthouse		606K	974-5123
Mental Health Depts.	1150 San Fernando Rd.	95-95A		226-2906
Probate Master Calendar	Courthouse	11	248	974-5601
Probate	Courthouse	8	239	974-5994
Probate Commissioners	Courthouse		258	974-5471
Supplementary Proceedings	Courthouse	1A	209	974-5440
Trial Setting & Arbitration Status Conference	Courthouse	3	224	974-5589
Writs and Receivers — Odd Numbers	Courthouse	85	633	974-5886
Writs and Receivers — Even Numbers	Courthouse	86	636	974-5961

JUVENILE DEPARTMENT

Gabriel Gutierrez, Presiding Judge — Kathryn Doi Todd, Supv. Judge — John Crowner, Director

Centra Juvenile Court
210 W. Temple St. (90012) 974-5661

Antelope Valley Facility	1040 W. Ave. J, Lancaster (93534)	805/940-6486
Centra Facility	210 W. Temple (90012)	974-4818 & 974-5963
Compton Facility	200 W. Compton Blvd., Compton (90220)	603-7301
Eastlake Facility	1601 Eastlake Ave. (90033)	226-8681
Inglewood Facility	110 Regent, Inglewood (90301)	419-5281
David V. Kenyon Juv. Justice Center	7625 S. Central Ave. (90001)	586-8066
Long Beach Facility	415 W. Ocean Blvd., Long Beach (90802)	491-6157
Los Padrinos Facility	7281 E. Quill, Downey (90242)	922-8813
Pasadena Facility	300 E. Walnut, Pasadena (91101)	818/356-5671
Pomona Facility	400 Civic Center Plaza, Pomona (91766)	818/967-1411
San Fernando Valley Facility	16360 Filbert St., Sylmar (91342)	818/362-4331

LOS ANGELES SUPERIOR COURT JUDGES

Thomas T. Johnson, Presiding Judge

Abler, Richard A.
Aeschlan, David J.
Albrecht, James A.
Allen, Warren D.
Alsten, Gilbert C.
Altman, Robert T.

87

LOS ANGELES COUNTY (Continued)

Armstrong, Robert W.
Ashmann, Judith Meseke
Bach, Burton
Baffa, Frank
Baldonado, Arthur
Barrera, Victor T.
Bazan, Alfonso M.
Beam, Ellsworth M.
Berg, Michael
Bermasen, Florence
Beverly, William C.
Bigelow, M. Ross
Biggerstaff, Ralph A.
Boland, Paul
Boren, Roger W.
Breckenridge, Paul G., Jr.
Brown, Nancy M.
Burke, Michael L.
Byrne, Richard P.
Cassie, Ronald E.
Cardenas, Reymond
Chervet, Richard F.
Chernow, Eli
Chirin, Judith C.
Choate, Raymond
Carichael, Sam
Clay, William R.
Cole, John J.
Compton, Barnet M.
Corral, Jaime R.
Crockard, Jack A.
Croft, Janice Claire
Crosley, H. Walter
Deering, Warren H.
Denner, Richard
Deutz, Max F.
Dixon, Sally G.
Dorn, Roosevelt F.
Dowda, Norman R.
Dunbar, Rosemary M.
Dunnum, Carroll M.
Early, Alexander R., III
Einstein, Robert
Epstein, Norman L.
Fagan, D. Sterry
Feiner, Robert
Fieldhouse, Carol
Fields, Jerome K.
Fletcher, Daniel L.
Flier, Madeleine I.
Freiser, Vernon G.
Francesius, Mortimer
Fretianna, Robert D.
Frisco, Charles E.
Fuesser, Hiroshi
Fukaki, Mario L.
Gale, Kenneth W.
Gasmasri, Bruce R.
George, Ronald M.
Godoy Perez, Ramona
Goerdan, Jack E.
Goelin, Martha
Gordon, Norman W.
Gorman, Edward L.
Grover, Melvin B.
Guisemez, Gabriel A.
Haber, Alan B.
Harris, Richard G.
Hastings, J. Gary
Henning, John L.
Henry, Dana B.
Higa, Robert J.
Hight, Bob T.
Hinz, Edward A., Jr.
Hiroshige, Ernest M.
Hogan, Maurice R., Jr.
Hollingsworth, W. R., Jr.
Horowitz, David A.
Hubbell, Richard C.
Ibanez, Richard A.
Jenevs, Dzintra
Johnson, Barbara Jean
Johnson, Thomas T.
Jones, Charles E.
Jones, Philip F.
Kakita, Edward Y.
Kasin, Joseph R.
Kaluzson, Richard
Katz, Burton S.
Kaufman, Dan
Kelly, Ernest L.
Klausner, Gary
Kolosseo, Richard G.
Kolts, James G.
Lachs, Stephen M.
LaFront, Robert L.
LaVine, Richard A.
Leetham, Julius A.
Leitsau, Robert M.
Levie, Gerald J.
Lew, Ronald S. W.
Lewin, Kurt J.
Light, Leslie W.
Long, Eugene J.
Lopez, Robert B.
Major, John H.
Malarik, Robert M.
Malone, Stanley R., Jr.
Mandel, Alfred I.
Markby, Christen L., Jr.
Martin, Bonnie Lee
Martinez, Robert M.
Matthews, Albert D.
Matsumba, Jean
McGinley, William E.
McKee, Douglas A.
McVittie, William J.
Miller, Loren, Jr.
Mills, Billy G.
Mills, Cecil J.
Monaco, Richard
Moore, H. Randolph, Jr.
Morrow, Dion G.
Munat, Aurelio
Nadell, James P.
Nelson, Irwin J.
Nelson, Peggy S.
Newmark, Jack M.
Northcutt, Roy C.
Nuss, Thomas P.
Nye, Robert C.
O'Brien, Robert H.
Older, Charles H.
Olsen, Robert M.
O'Rourke, Terry Bryan
Ortega, Reuben A.
Parish, Robert U.
Pekarsnish, George R., Jr.
Perez, David G.
Pfau, Glenn M.
Platt, James H.
Platt, Theodore
Prichard, Florence T.
Pruan, Michael
Pete, Donald F.
Pierce, Sheila F.
Pounders, William R.
Redin, Sara K.
Reed, Rebecca
Reese, James H.
Reid, Marie
Riley, Earl F.
Rimerman, Fred
Ringer, Gordon
Rubenstein, Lawrence J.
Roberson, Robert L., Jr.
Rosenman, Marion
Ross, Edward M.
Rothman, David M.
Rothchild, Frances
Rowen, Marvin D.
Rudell, Joel
Rylaum, Jack T.
Saetta, Philip M.
Sevitch, Leon
Scarisi, Charles R.
Schaefer, David
Schempp, Darlene E.
Schifferman, Robert P.
Schneider, Thomas
Schwab, Howard J.
Schwartz, S. S.
Shabo, Harold E.
Sheldon, Betty Jo
Sheldon, Charles O.
Shimer, Irving A.
Shook, John P.
Smith, Peter S.
Sosebe, Bruce J.
Sowin, Abby
Stanton, John R.
Stevens, Lillian M.
Stromwall, Clarence A.
Sutton, James M., Jr.
Swart, Coleman A.
Swearinger, Ronald E.
Swink, Jack W.
Tanner, Jack
Thelina, Howard J.
Thomas, David A.
Thomas, Robert W.
Todd, Kathryn D.
Torres, Richards A.
Tso, Jack S.
Tucker, Marcus O.
Turner, Paul
Tynan, Michael
Valenta, Carlos E.
Vogel, Miriam
Waddington, Laurence
Walker, J. Kimball
Wallis, Madge S.
Wayne, Diense L.
Weil, Robert I.
Weisberg, Jacqueline L.
Williams, Alexander H., III
Williams, Ernest G.
Winston, William H., Jr.
Wolf, Leonard S.
Woods, Fred
Wornmer, David A.
Xanthos, George
Younger, Eric

Court Reporters

Abbott, Joan R.
Arst, Robert S.
Baron, Elizabeth A.
Black, Kenneth A.
Blaylock, Robert J.
Briggs, James A.
Bridwell, Kent M.
Bubnick, Sam
Callan, Luther

88

Carol, Alvin B.
Carol, Marty D.
Cassar, Florence-Marie
Cornell, Michael A.
Curtis, Richard A.
Dickey, John W.
Fletcher, Robert H.
Garfinkle, Irwin H.
Gold, Jack J.
Gordenstein, Abraham
Hausdorfer, H. Ronald
Hermann, Russell R.
Horman, Christine B.
Jones, Jewell
Juster, Sherman
Kamalo, George
Kightlinger, Harry J.
Klein, Herbert M.
Levin, Arnold
Maclaskey, Hugh E., Jr.
Moore, Jerry T.
Moroney, Carl V.
Moss, Milton L.
Mouron, Bertrand D., Jr.
Nosal, David R.
Olsen, Joe D.
Rice, Donald W.
Romney, Gary A.
Price, Michael G.
Rogins, Lee B.
Reichman, Victor I.
Rich, Leo S.
Robbins, Jill S.
Sanidas, John H.
Schaffer, Benson
Schneider, Robert A.
Shapiro, Anita Rae
Stockton, Ann
Stoudt, Bradley A.
Taylor, H. George
Tomlinson, John A.
Veleta, Mark
Orvell, James A., Jr.
Zaslow, Robert W.
Zellerbach, John
Zeavout, David A.

Officers

County Clerk/Executive Officer/Jury Commissioner
Frank S. Zolin 974-5401

Assistant County Clerk
Raul A. Acosta 974-5104

Director, District Courts
James DePriest 974-5119

Director, Central Civil/Family Law/Probate Services
David J. Collins 974-5118

Civil Court Coordinator
Arnold Pena 974-5408

Administrative Administrator
John B. Austin 974-5426

Division Chief, Court Services Division
Larry Jackson 974-5201

Division Chief, Civil Processing Division
George Cossard 974-5231

Director, Central Criminal Services
John Walker 974-5271

Criminal Courts Coordinator
John Iverson 974-5811

Probate Commissioner
Anne E. Stadtden 974-5481

Assistant Executive Officer
Eric D. Webber 974-5101

Director, Administrative Services
Edward C. Bunning 974-5108

Division Chief, Financial Management Division
John W. Slaster 974-5179

Division Chief, Management Systems Division
Larry Blankenship 974-5123

Chief, Facilities Management
Beverly Corcoran 974-5305

Director, Personnel Management
Ginger Vaduno 974-5134

Director, Payroll Services
David M. Davies 974-5830

Director, Family Court Services/Conciliation Court
Hugh Macaulay 974-5831

Director, Court Staff Services
Bunsella Harris 974-5363

Director, Juror Services
Raymond F. Arce 974-5814

Director, Juvenile/Mental Health Court Services
John Creamer 974-5121

Division Chief
Jim Shepard 209-8831

Delinquency Coordinator
Phyllis Johnson 974-5861

Dependency Coordinator
Charlene Saunders 974-5861

Los Angeles Probate Attorneys Office

111 N. Hill St., Rm. 258, Los Angeles (90012) 974-5481

Ann E. Stadtden, Probate Commissioner and Supervising Probate Attorney
Timothy Whitehouse, Asst. Supervising Probate Attorney

Supervising Probate Court Investigator — Jerry Wisner — 974-5859

Acer, Richard T.
Bain, Richard
Carroll, Marleen M.
Dickson, Archie
Fun, Lawrence
McLlary, John B.
Merrill II, John B.
Mooney, C. Duane
Neil, Theodore R.
Peck, John D.
Peterson, Warren K.
Slagle, Edna
Thurman, Elaine

Office of the County Clerk and Clerk of the Superior Court

111 N. Hill St., Rm. 106E, Los Angeles (90012)
Information Only 974-5115

Accounting, Chief — 974-5147
Filing Window — 974-5186
Assignments — 974-5236
Civil Processing, Chief — 974-5231
Court Services, Chief — 974-5301
Criminal, Chief — 974-5271
Juvenile, Chief — 209-8831
Civil Master Calendar — 974-5484
Criminal Calendar — 974-5711
Mental Health — 209-2822
OSC Setting Clerk — 974-5173
Marriage Licenses/Corporation Supervisor — 974-5210

Marshal's Office

Robert F. Mann, Marshal
210 W. Temple St., Rm. L-4, Los Angeles (90012)
Administration: 974-5394

Civil Case Information: 974-5311
Criminal Warrant Information: 974-5336

(The Marshal of the Municipal Court of Los Angeles is also the Marshal of all the Municipal Courts in Los Angeles County.)

89

EUGENE JOHN CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067-0292

Appellant

ORIGINAL FILED
FEB 0 5 1988
COUNTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE JOHN CARELLA, Appellant, vs. PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	) Appeal No. CRA 24001)) LAMC M 83675 (Beverly Hi)) APPELLANT'S MOTION FOR D) FICATION OF JACK NEWMAN,) MARGOLIS, FREDERICK WOOD) ROBERT ROBERTSON, JUDGES) LOS ANGELES SUPERIOR COU) APPELLATE DEPARTMENT; ME) DUM OF POINTS AND AUTHOR DECLARATION OF EUGENE JO CARELLA, ESQ.

COMES NOW EUGENE JOHN CARELLA, ESQ., Appellant her
pursuant to the Rules of Court, and does hereby and herewi
move for the immediate disqualification and recusal of Jac
Newman, Alfred Margolis, Frederick Woods, Robert Robertson
Judges of the Los Angeles Superior Court Appellate Departm
and that each of them be and stand recused, prohibited and
proscribed from taking any further action on the aforestat
appeal, and that a successor panel be appointed to hear,
adjudicate, and otherwise preside over the conduct of the
appeal and proceedings and matters related thereto in the
above-styled appeal by the Chairperson of the Judicial Cou

90

in accordance with law.

Said motion is made for cause pursuant to § 170.3(c) of the Rules of Court and to protect Appellant's right to receive a fair trial and appellate determination of his cause.

In support of said motion for disqualification of the aforestated judges, Appellant respectfully shows his Declaration identified as EXHIBIT "A" attached. Said motion is further based on all papers, pleadings, documents, records and the like on file herein -- together with the memorandum of points and authorities; and such further and additional evidence as may be adduced at the hearing hereon.

DATED: February 4, 1988

BY: _____
EUGENE JOHN CARELLA, ES

,,,

,,

91

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE JOHN CARELLA, ESQ., declare and state as follows:

1. That I am the appellant in Appeal No. CRA 24001

2. That I make the instant written declaration pursuant to § 170.3(c)(1) objecting in no uncertain way for cause to having the hearing or trial or any aspect of the subject proceeding being adjudicated by Frederick Woods Alfred Margolis, Jack Newman, Robert Robertson, Judges of the Los Angeles Superior Court Appellate Department, and specifically and unequivocally demand they forthwith cease and desist in the subject proceeding and stand recused.

3. That I am informed and thereon state the aforer judges are disqualified on the following grounds:

The judges, and each of them, have personal knowle of disputed evidentiary facts pertaining to the proceeding and have gained said knowledge of the subject underlying proceedings and facts through ex parte sources not parties to the appeal and agreed in furtherance of a criminal con to violate appellant's civil and constitutional rights and to falsely imprison Appellant, a distinguished federal practitioner, notwithstanding the evidence or the merits of his appeal and to rule against him on every issue here:

4. That the judges have been instructed by third parties, including the National Security Council, Central

EXHIBIT "A" 92

Intelligence Agency, U. S. Department of Justice and others to rule against Appellant in the within appeal and to otherw deny him a fair hearing and appeal, and to falsely imprison appellant and to deny him preparation of a reporters transcri of trial proceedings.

5. That each judge's recusal is required in the interest of justice, and because a person aware of all the facts would entertain a "substantial doubt" that the judges would be able to impartially discharge his duties to Appellant and to adjudicate the merits of his appeals fairly.

6. That each of the named judges has gained knowle of the proceedings from extra-judicial sources and persons, impairing the discharge of their duties fairly and even-handedly to appellant.

7. That the judges, and each of them, is grossly biased and prejudiced against me, and has acted, and contin to act, in furtherance of a criminal racketeering conspirac interstate in nature, to falsely imprison me and to deprive me of my constitutional rights and liberties of life, liber and property, and I learned on February 4, 1988 that said judges have ruled to deprive and deny me the preparation and filing of the reporters transcripts of trial evidence, making it impossible for me to vindicate th twenty-three (23) grounds on appeal and despite my sta as being indi

and financially unable to pay for said transcripts.

8. That I learned today from the Clerk of the Superior Court Appellate Department the true names and identities of said appellate judges and that said judges have ruled to deny me the reporters transcripts at public expense even though I am indigent and even though the State Supreme Court in In Re Armstrong, 126 C.A. 3d 565 makes it mandatory that I be furnished said reporters transcripts at public expense.

9. That I am informed and believe and thereupon state that said judges have been offered consideration to rule against me in the subject appeal and to deny my motion for transcripts by third persons not associated with said proceedings.

10. That I specifically request the Judicial Council's intervention to appoint a judge to adjudicate this disqualification petition and grant me a hearing on said disqualifications.

11. That the foregoing statements and written declaration are made and filed in good faith to protect appellant's constitutional rights herein and to prevent against further criminal misconduct against Appellant.

I declare the foregoing is true and correct to

73

the best of my knowledge and ability.

Executed on this 4th day of February 1988 in Los Angeles, California, under penalty of perjury.

EUGENE JOHN CARELLA, ESQ.

94

MEMORANDUM OF POINTS AND AUTHORITIES

I.

"DISQUALIFICATION OF JUDGES" PROVISIONS OF THE RULES OF COURT CORRELATE RESPONDENT JUDGES OF THE SUPERIOR COURT, APPELLATE DEPARTMENT, AND ARE CLEARLY APPLICABLE IN ADJUDICATING THE MOTION FOR DISQUALIFICATION OF JUDGES MARGOLIS, WOODS, NEWMAN AND ROBERTSON.

Section 170.5

II.

RESPONDENT APPELLATE JUDGES ARE ONLY EXEMPTED FROM SECTION 170.6 DISQUALIFICATION CHALLENGES AND NOT SECTION 170.3, ET SEQ. CHALLENGES AS MADE BY APPELLANT HEREIN.

Section 170.7
Section 170.3(a)

III.

JUDICIAL COUNCIL MUST BE APPOINTED (SIC.) APPROVED BY THE CLERK OF THE SUPERIOR COURT FORTHWITH TO ADJUDICATE THE SOUGHT FOR DISQUALIFICATION OF RESPONDENT JUDGES BY APPELLANT.

Section 170.3(c)(4)(5)

95

IV.

THAT APPELLANT'S MOTION FOR DISQUALIFICATION AND ACCOMPANYING AFFIDAVIT CONSTITUTE A PRIMA FACIE SHOWING OF DISQUALIFICATION PER SE AGAINST SAID RESPONDENT JUDGES OF THE LOS ANGELES SUPERIOR COURT APPELLATE DEPARTMENT REQUIRING THEIR IMMEDIATE RECUSAL AND VACATING OF ANY AND ALL JUDGMENTS, ORDERS RENDERED BY SAID APPELLATE RESPONDENT.

Section 170.3(c)

CONCLUSION

FOR ALL THE FOREGOING REASONS, Appellant respectfully prays that an Order forthwith issue declaring that Respondent Judges of the Los Angeles Superior Court, Jack Newman, Alfred Margolis, Frederick Woods, Robert Robertson be and stand recused, and that the Judicial Council be summoned immediately to adjudicate said disqualification motion and to act promptly to disqualify said judges and to appoint a new appellate panel consisting of four members who are free from bias, prejudice, animous, discrimination against Appellant and who are not acting on an ex parte basis to falsely imprison Appellant and deny him his basic constitutional rights, and that any and all orders, rulings, etc. made by said Respondent Judges Margolis, Newman, Woods, Robertson be forthwith vacated in accordance with law.

96

DATED: February 4, 1988

BY: _____
EUGENE J. CARELLA, ESQ.

97

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this the____day of February I served a true copy of the foregoin Appellant's Motion for Disqualification of Alfred Margolis, Jack Newman, Frederick Woods, Robertson, Judges of Los Angeles Superior Court Appellate Department; Memorandum of Points and Authorities; Declaration of Eugene John Carella, Esq. on all parties of record by first class maill, postage prepaid, addressed as follows:

IRA REINER
District Attorney
849 S. Broadway
11th Floor
Los Angeles, CA 90014

Eugene J. Carella

9f

EUGENE J. CARELLA, ESQ.
P. O. Box 67292
Century City
Los Angeles, California 90067

Appellant

ORIGINAL FILED
FEB 17 1988
COUNTY CLERK

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

EUGENE J. CARELLA, ESQ., Appellant, v. PEOPLE OF STATE OF CALIFORNIA, Respondent.	Appeal No. CRA 24001 LAMC M 83675 APPELLANT'S FORMAL STATORY DEMAND TO CLERK OF APPELLATE DEPARTMENT OF LOS ANGELES SUPERIOR CC ADVISING JUDICIAL COUNC TO SELECT JUDGE TO ADJUCATE DISQUALIFICATION; DECLARATION OF EUGENE J CARELLA, ESQ.; MEMORANDUM POINTS AND AUTHORITIES.

COMES NOW EUGENE J. CARELLA, ESQ., Appellant herein, and does respectfully make formal demand upon the Clerk of the Appellate Department of Los Angeles Superior Court, pursuant to Rule 10.3(c)(5)(6) to notify the Executive Officer of the Judicial Council to have its vice-chairperson appoint a judge free from bias or prejudice or discrimination against Appellant or in favor of Respondent Appellate Department judges as recited in Appellant's Motion for Disqualification identified as EXHIBIT "B" and attached herewith, to adjudicate said Motion for Disqualification in accordance with law and

99

to accord Appellant an evidentiary hearing on said disqualific
tion and the right to make argument thereon.

In support of said demand, Appellant respectfully shows his Declaration attached as EXHIBIT "A" herewith and Memorandum of Points and Authorities.

WHEREFORE, Appellant respectfully demands the Clerk forthwith notify the Executive Officer of the Judicial Counci of the necessity of the Judicial Council to act to appoint a judge to adjudicate the moved for disqualification of Judge Alfred Margolis, Jack Newman, Robert Robertson and Fred Woods and after adjudicating order said Appellate Department recuse

DATED: February 15, 1988

BY: _____
EUGENE J. CARELLA, ESQ.

100

DECLARATION OF EUGENE J. CARELLA, ESQ.

I, EUGENE J. CARELLA, ESQ., declare and state as follow

1. That I am the appellant in the aforecaptioned matter.

2. That on or about February 4, 1988, shortly after learning of the identities for the first time of Appellate Department of Los Angeles Superior Court from the Clerk of Appellate Department, and after also being apprised that Appellate Department acted to deny a Reporters Transcript at public expense, even though indigent, I moved for the immediate disqualification of Judges Alfred Margolis, Jack Newman, Robert Robertson, and Fred Woods on statutory grounds as more fully appears in the Motion for Disqualification identified as Exhibit "B" attached herewith. Said motion was timely filed and served on February 5, 1988.

3. That said disqualification was sought prior to receipt and actual knowledge of an order entered by said Appellate Department on "the merits" of said appeal, which opinion was based in large measure on the lack of evidence in the record to support Appellant's claims and grounds for appeal.

4. That on February 16, 1988, I received a copy of Respondent Judges written verified answer to their disqualif tion and the factual allegations in support of disqualificat said verified answer filed on February 12, 1988 pursuant

EXHIBIT "A"

101

Section 170.3(c)(3). Said verified responsesby said judges contains material alterations of facts and material omissions as will be more fully shown at the evidentiary hearing.

5. That each of the Respondent judges is prohibited from passing upon his or her own disqualification or "upon the sufficiency in law, fact, or otherwise of the statement of disqualification filed by a party."

6. That I am unable to agree to another judge with the People of the State of California (the adverse party) as to a judge to adjudicate the disqualification motion.

7. That I further state that I have strong grounds to prevent and disqualify Malcolm Lucas to act in his capacity either as chairperson of the Judicial Council or judge of the Supreme Court in this litigation in that he has acted in prior litigations conducted by me adversely in the federal court system to egregiously abrogate my federal constitutional rights and liberties and is subject to per se recusal by me and proscribed from acting herein in any capacity.

8. That Section 170.3(c)(5) compels that the Clerk of the Appellate Department of the Los Angeles Superior Court forthwith notify the Executive Officer of the Judicial Council to have the Vice Chairperson of the Judicial Council act to select a judge to adjudicate the disqualification if the chairperson is unable (because of disability stated

herein) to act to select a judge free from bias and prejudice

9. That I herewith make an unequivocal demand to have the Clerk of the Appellate Department, Los Angeles Superior Court, act immediately to notify the Judicial Counci of the need to select a judge free from bias, prejudice and discrimination against Appellant or his cause and in favor of Respondent Appellate Department judges to adjudicate Appellant's Motion for Disqualification of Respondent Appella Department attached as Exhibit "B".

10. That I further request the Clerk to advise the Judicial Council of my demand for an evidentiary hearing on the subject motion for disqualification.

11. That I further demand that Respondent Appellate Department Judges Newman, Margolis, Robertson, Woods cease at once from all further conduct and action in the subject appeal.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and ability.

Executed on this___day of February 1988 in Los Angeles, California.

/S/
EUGENE J. CARELLA, ESQ.

103

MEMORANDUM OF POINTS AND AUTHORITIES

Chapter 3: Disqualification of Judges.

Section Nos. 170.1, 170.2, 170.3; 170.4, 170.5, 170.6, 170.7 of the Rules of Court.

CONCLUSION

WHEREFORE, Appellant respectfully demands that the Clerk notify the Judicial Council of the need to select a judge in accordance with law to adjudicate Appellant's Motion for Disqualification, attached herewith as EXHIBIT "B" and his demand for an evidentiary hearing on said motion.

DATED: February 12, 1988

By: EUGENE J. CARELLA, ESQ
Appellant

104